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**FINAL**  
CITY COUNCIL  
  
CITY OF WICHITA  
KANSAS

City Council Meeting  
09:00 a.m. May 15, 2012

City Council Chambers  
455 North Main

**OPENING OF REGULAR MEETING**

- Call to Order
- Invocation
- Pledge of Allegiance
- Approve the minutes of the regular meeting on May 8, 2012

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**AWARDS AND PROCLAMATIONS**

- Proclamations:  
  
Bike to Work Week
- Awards:  
  
Small Business Administration

**I. PUBLIC AGENDA**

NOTICE: No action will be taken relative to items on this agenda other than referral for information. Requests to appear will be placed on a "first-come, first-served" basis. This portion of the meeting is limited to thirty minutes and shall be subject to a limitation of five minutes for each presentation with no extension of time permitted. No speaker shall be allowed to appear more frequently than once every fourth meeting. Members of the public desiring to present matters to the Council on the public agenda must submit a request in writing to the office of the city manager prior to twelve noon on the Tuesday preceding the council meeting. Matter pertaining to personnel, litigation and violations of laws and ordinances are excluded from the agenda. Rules of decorum as provided in this code will be observed.

None

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**II. CONSENT AGENDAS (ITEMS 1 THROUGH 16)**

NOTICE: Items listed under the "Consent Agendas" will be enacted by one motion with no separate discussion. If discussion on an item is desired, the item will be removed from the "Consent Agendas" and considered separately

*(The Council will be considering the City Council Consent Agenda as well as the Planning, Housing, and Airport Consent Agendas. Please see "ATTACHMENT 1 – CONSENT AGENDA ITEMS" for a listing of all Consent Agenda Items.)*



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**COUNCIL BUSINESS**

**III. UNFINISHED COUNCIL BUSINESS**

None

**IV. NEW COUNCIL BUSINESS**

1. Public Hearing and Tax Exemption Request, Chrome Plus International. (District IV)

RECOMMENDED ACTION: Close the public hearing, and approve first reading of the Ordinance granting Chrome Plus a 78.75% tax exemption on the identified improvements for a five year term, plus a 78.75% tax exemption for a second five-year term, subject to City Council review.

2. Public Hearing, Request for Resolution of Support for Application for Housing Tax Credits; Rushpointe Apartments. (District I)

RECOMMENDED ACTION: Close the public hearing, adopt the resolution of support for the application for Housing Tax Credits, subject to all local building and zoning codes, ordinances and any additional design review requirements, with waiver of the 20% market-rate unit requirement.

3. Public Hearing, Request for Resolution of Support for Application for Housing Tax Credits; Residences at Linwood. (District III)

RECOMMENDED ACTION: Close the public hearing, adopt the resolution of support for the application for Housing Tax Credits, subject to all local building and zoning codes, ordinances and any additional design review requirements, with partial waiver of the 20% market-rate unit requirement.

4. Wichita Transit Service Reductions.

RECOMMENDED ACTION: Approve a service reduction that will eliminate weekday half-hour peak service, service to Goodwill, and the Westside Connector route in order to have a balanced budget for 2012.

5. Community Events 2012 Wichita River Festival. (Districts I, III, IV and VI)

RECOMMENDED ACTION: Approve the request for permit for Wichita Festivals, Inc. 2012 River Festival taking place June 1-9, 2012.

6. Central Library Architectural Programming Supplemental Agreement. (District VI)

RECOMMENDED ACTION: Approve the supplemental agreement for revisions to the building program for the new Central Library and authorize the Mayor to sign the contract.

7. Proposed ordinance creating Chapter 9.35, and repealing Chapters 9.20 and 9.22 of the Code of the City of Wichita.

RECOMMENDED ACTION: Place the ordinance on first reading and authorize the necessary signatures.

8. Amendments to Chapter 3.84 of the Code of the City of Wichita pertaining to the Licensing of Taxicab Companies, Taxi Drivers and Inspection of Taxicab Vehicles.

RECOMMENDED ACTION: Place ordinance on first reading.

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## **COUNCIL BUSINESS SUBMITTED BY CITY AUTHORITIES**

### **PLANNING AGENDA**

NOTICE: Public hearing on planning items is conducted by the MAPC under provisions of State law. Adopted policy is that additional hearing on zoning applications will not be conducted by the City Council unless a statement alleging (1) unfair hearing before the MAPC, or (2) alleging new facts or evidence has been filed with the City Clerk by 5p.m. on the Wednesday preceding this meeting. The Council will determine from the written statement whether to return the matter to the MAPC for rehearing.

### **V. NON-CONSENT PLANNING AGENDA**

1. ZON2012-00009-City zone change from NO Neighborhood Office with PO-170 to LC Limited Commercial ("LC") and GO General Office ("GO") with amendments to PO-170 for a bank with drive through and office development; generally located south of East 21<sup>st</sup> Street North and west of North Cranbrook. (District II)

RECOMMENDED ACTION: 1) Adopt the findings of the MAPC and approve the zone change and PO-170 amendment per the MAPC approval, authorize the Mayor to sign the ordinance and place the ordinance on the first reading (three-quarters majority required, 6 of 7 votes of the City Council, to override the 35% protest petition) OR 2) Deny the request (an override of the Planning Commission's recommendation requires a two-thirds majority vote of the City Council on the first hearing) OR 3) Return the case to MAPC for re-consideration (requires a simple majority vote of the City Council).

## **HOUSING AGENDA**

NOTICE: The City Council is meeting as the governing body of the Housing Authority for consideration and action on the items on this Agenda, pursuant to State law, HUD, and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

**Fern Griffith, Housing Member is also seated with the City Council.**

### **VI. NON-CONSENT HOUSING AGENDA**

None

## **AIRPORT AGENDA**

NOTICE: The City Council is meeting as the governing body of the Airport Authority for consideration and action on items on this Agenda, pursuant to State law and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

### **VII. NON-CONSENT AIRPORT AGENDA**

None

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## **COUNCIL AGENDA**

### **VIII. COUNCIL MEMBER AGENDA**

1. Approval of travel expenses for Mayor Brewer to attend League of Kansas Municipalities Governing Body Meeting in Topeka, KS, June 7-8, 2012.

RECOMMENDED ACTION:

### **IX. COUNCIL MEMBER APPOINTMENTS**

1. Board Appointments.

RECOMMENDED ACTION: Approve the Appointments.

Adjournment

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(ATTACHMENT 1 – CONSENT AGENDA ITEMS 1 THROUGH 16)

**II. CITY COUNCIL CONSENT AGENDA ITEMS**

1. Report of Board of Bids and Contracts dated May 14, 2012.

RECOMMENDED ACTION: Receive and file report; approve Contracts;  
authorize necessary signatures.

2. Applications for Licenses to Retail Cereal Malt Beverages:

<u>Renewal</u>	<u>2012</u>	<u>(Consumption on Premises)</u>
Minh Hoang Nguyen	Minh Hoa Restaurant Cajun Seafood	1556 North Broadway Ste 600
Mui Fong Yu	Tom's Lotus Garden**	822 South Broadway
<u>Renewal</u>	<u>2012</u>	<u>(Consumption off Premises)</u>
Amy Thrasher	Walmart #3283***	10600 West 21 North
Maria S Mercado	La Tapatia Market LLC***	1953 South Seneca
Ripandeep Brar	Friends Store LLC***	1231 E 29 North

\*Consumption/Tavern less than 50% of gross revenues from sale of food.

\*\*General/Restaurant 50% or more gross revenue from sale of food.

\*\*\*Consumption/Retailer grocery stores, convenience stores etc.

RECOMMENDED ACTION: Approve licenses subject to Staff review and approval.

3. Preliminary Estimates:

RECOMMENDED ACTION: Receive and file.

4. Petitions for Public Improvements:

- a. Petition for Sanitary Sewer in Putnam Addition, north of Harry, west of Rock.(District II)
- b. Petitions for Paving, Sanitary Sewer, Storm Water Drain and Water Distribution System to serve an unplatted tract, south of 47th St. South, west of Hydraulic. (District III)

RECOMMENDED ACTION: Approve Petitions; adopt resolutions.

5. Deeds and Easements:

- a. Deeds and Easements.

RECOMMENDED ACTION: Accept documents.

6. Consideration of Street Closures/Uses.

- a. Community Events - Show 'Em Your Ride. (District IV)
- b. Community Events - Operation Armed Forces Celebration 5K Run and Walk. (Districts IV and VI)

RECOMMENDED ACTION: Approve the request subject to; (1) Hiring off-duty certified law enforcement officers as required; (2) Obtaining barricades to close the streets in accordance with requirements of Police, Fire and Public Works Department; and (3) Securing a Certificate of Liability Insurance on file with the Community Events Coordinator.

7. Agreements/Contracts:

- a. Agreement for Golf Course Pro Shop Sales Services. (Districts I, III, IV, V and VI)

RECOMMENDED ACTION: Approve Agreements/Contracts; authorize the necessary signatures.

8. Design Services Agreement:

- a. Agreements for Design Services for Krug South Addition, Phase II, south of 21st Street North, west of 143rd Street East. (District II)
- b. Agreements for Design Services for Pearson Farms 3rd Addition, south of 21st Street North, west of Maize. (District V)

RECOMMENDED ACTION: Approve Agreements/Contracts; authorize the necessary signatures.

9. Change Orders:

- a. Change Order No. 2- ASR Northern Diagonal Transmission Main.

RECOMMENDED ACTION: Approve the Change Orders and authorize the necessary signatures.

10. Minutes of Advisory Boards/Commissions

Stormwater Advisory Board, April 13, 2012  
Joint Investment Committee, April 5, 2012

RECOMMENDED ACTION: Receive and file.

11. Grant with the Kansas Department of Transportation.

RECOMMENDED ACTION: Approve the application for the grant and authorize the Mayor to execute the contract.

12. Second Reading Ordinances: (First Read May 8, 2012)

- a. Second Reading Ordinances.

RECOMMENDED ACTION: Adopt the Ordinances.

## **II. CONSENT PLANNING AGENDA ITEMS**

NOTICE: Public hearing on planning items is conducted by the MAPC under provisions of State law. Adopted policy is that additional hearing on zoning applications will not be conducted by the City Council unless a statement alleging (1) unfair hearing before the MAPC, or (2) alleging new facts or evidence has been filed with the City Clerk by 5p.m. on the Wednesday preceding this meeting. The Council will determine from the written statement whether to return the matter to the MAPC for rehearing.

13. \*SUB2012-00003 -- Plat of Mead Middle School Addition located south of Harry, east of Hydraulic. (District III)

RECOMMENDED ACTION: Approve the plat and authorize the necessary signatures.

## **II. CONSENT HOUSING AGENDA ITEMS**

NOTICE: The City Council is meeting as the governing body of the Housing Authority for consideration and action on the items on this Agenda, pursuant to State law, HUD, and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

**Fern Griffith, Housing Member is also seated with the City Council.**

None

## **II. CONSENT AIRPORT AGENDA ITEMS**

NOTICE: The City Council is meeting as the governing body of the Airport Authority for consideration and action on items on this Agenda, pursuant to State law and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

14. \*Mann Aviation, LLC - Non-Commercial Hangar Operator Use and Lease Agreement for use of 3260 N. Jabara Road - Colonel James Jabara Airport.

RECOMMENDED ACTION: Approve the Agreement and authorize the necessary signatures.

15. \*EagleMed, LLC - Lease Agreement for use of 2163 Air Cargo Road Units G and H - Wichita Mid-Continent Airport.

RECOMMENDED ACTION: Approve the Agreement and authorize the necessary signatures.

16. \*EagleMed, LLC - Lease Agreement for use of 1761 Airport Road, Suite 400 - Wichita Mid-Continent Airport.

RECOMMENDED ACTION: Approve the Agreement and authorize the necessary signatures.

**City of Wichita  
City Council Meeting  
May 15, 2012**

**TO:** Mayor and City Council

**SUBJECT:** Public Hearing and Tax Exemption Request (Chrome Plus International)  
(District IV)

**INITIATED BY:** Office of Urban Development

**AGENDA:** New Business

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**Recommendation:** Close the public hearing and place Ordinance on first reading.

**Background:** Chrome Plus International was founded in McPherson in 1991 as a processor of steel and aluminum for use by aircraft Original Equipment Manufacturers (OEM) and suppliers in the manufacturing process. In 2007, Chrome Plus opened a 40,000 square foot facility in Wichita, and added an additional 20,000 square feet in 2011 for which it was granted an Economic Development Exemption (EDX). Chrome Plus is now beginning an additional 20,000 square foot expansion and is now requesting approval of a tax exemption under the Economic Development Exemption (EDX) Program on the new additions to its manufacturing facility.

**Analysis:** Chrome Plus is located at 3939 West 29<sup>th</sup> in Southwest Wichita. The company is completing an expansion to the aluminum and steel processing facility which will allow the company to increase its aluminum and steel processing capabilities. Chrome Plus exports 20% of its products out of Kansas; customers include aircraft OEMs and major tier suppliers.

Chrome Plus is constructing and equipping a 20,000 square foot expansion of the existing facility at a cost of approximately \$2,250,000.

As a result of prior incentives, Chrome Plus had committed to add at least 65 jobs by 2015. The new expansion project will add an additional 30 new employees over five years at an estimated average wage of \$36,801 per year, for a total of 95 employees by the end of 2017. The City/County Economic Development Incentive Policy requires average wages which at least equal the average annual wage for all North American Industrial Classification System (NAICS) job categories in the Wichita market; excluding the NAICS code for the aviation manufacturing sector which includes both original equipment manufacturers (OEMs) and aviation subcontractors. The average wage for all NAICS jobs in the Wichita MSA, excluding the aviation NAICS, is \$36,801. Under the Incentive Policy, Chrome Plus is eligible for a 78.75%, 5+5-year property tax abatement based on the combined investment and job creation/wage commitment.

**Financial Considerations:** Based on the 2011 mill levy, the estimated tax value of exempted property for the first full year is approximately \$53,292. The value of the 78.75% real property tax exemption as applicable to taxing jurisdictions is:

City	\$14,334	State	\$ 665
County	\$13,036	USD 259	\$25,257

Wichita State University's Center for Economic Development and Business Research performed a cost-benefit analysis indicating benefit-to-cost ratios, which are as follows:

City of Wichita General Fund	2.40 to one
City of Wichita Debt Service Fund	3.23 to one
Sedgwick County	2.05 to one
USD 259	1.25 to one
State of Kansas	39.44 to one

**Goal Impact:** Economic Vitality and Affordable Living. Granting an ad valorem property tax exemption will encourage the business to create new job opportunities and stimulate economic growth for the City of Wichita and Sedgwick County.

**Legal Considerations:** The Law Department has approved the attached Ordinance and Economic Development Incentive Agreement as to form.

**Recommendations/Actions:** It is recommended that City Council close the public hearing, and approve first reading of the Ordinance granting Chrome Plus a 78.75% tax exemption on the identified improvements for a five year term, plus a 78.75% tax exemption for a second five-year term, subject to City Council review.

**Attachments:** Ordinance, Economic Development Incentive Agreement



FIRST PUBLISHED IN THE WICHITA EAGLE ON MAY 25, 2012

ORDINANCE NO. 49-272

AN ORDINANCE EXEMPTING PROPERTY FROM AD VALOREM TAXATION FOR ECONOMIC DEVELOPMENT PURPOSES PURSUANT TO ARTICLE 11, SECTION 13, OF THE KANSAS CONSTITUTION; PROVIDING THE TERMS AND CONDITIONS FOR AD VALOREM TAX EXEMPTION; AND DESCRIBING THE PROPERTY OF CHROME PLUS INTERNATIONAL, INC., SO EXEMPTED.

WHEREAS, Article 11, Section 13, of the Kansas Constitution provides that the governing body of the City may, by Ordinance, exempt from all ad valorem taxation all or any portion of the appraised value of certain property meeting the requirements of the constitutional provision; and

WHEREAS, the City of Wichita has adopted an Economic Development Incentive Policy by which the City will consider granting tax exemptions upon a clear and factual showing of direct economic benefit including the creation of additional jobs or the upgrading of existing jobs and the stimulation of additional private investment; and

WHEREAS, Chrome Plus International, Inc., requests an ad valorem tax exemption on a proposed expansion project of 78.75% for a five-plus-five year term on the construction of new buildings and certain pieces of equipment; and

WHEREAS, Chrome Plus International, Inc. has operated within the City for more than four years as a processor of aluminum, steel and chrome; and

WHEREAS, Chrome Plus International, Inc., proposes a \$2,250,000 expansion by the construction of a new building expansion to be located at 3939 W 29th St. South in southwest Wichita; and

WHEREAS, the City Council of the City of Wichita has reviewed the application and supporting documentation supplied by Chrome Plus International, Inc., has reviewed the impact statements provided by Staff, and the Cost-Benefit Analysis by the Wichita State University and has conducted a public hearing on such application on May 15, 2012; and

WHEREAS, the City Council of the City of Wichita has found and determined:

1. Chrome Plus International, Inc. is an existing business located in Wichita, Kansas, and intends to expand its business by construction of a building expansion.

2. The construction of the expansion for which exemption is given occurred after January 1, 2012. No exemption will be given for construction which occurred before that date.
3. Such construction is to be used exclusively for manufacturing articles of commerce.
4. By such expansion, Chrome Plus International, Inc. will create new employment for 30 employees by 2018.
5. Tax exemption will be given only for the construction of a building expansion.
6. The property on which exemption is given will meet the requirements of the Kansas Constitution and the City of Wichita's Economic Development Incentive Policy.
7. Such ad valorem tax exemption is in the public interest providing for economic growth and benefit including the creation of jobs and stimulating additional private investment.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WICHITA, KANSAS,

1. The City Council of the City of Wichita, Kansas hereby makes a factual determination that an ad valorem tax exemption of the type requested by Chrome Plus International, Inc. is required to retain jobs in the State of Kansas, and that the property to be exempted is to be used exclusively for manufacturing articles of commerce.
2. Chrome Plus International, Inc. is hereby granted an ad valorem tax exemption of 78.75% for a five-year term on the construction of a building expansion and 78.75% for a second five years, subject to approval by the then current governing body, located within the Wichita City limits at 3939 W 29th St. South in southwest Wichita, at an estimated cost of \$2,250,000. Such exemption is to begin in the calendar year after the calendar year in which the expansion is completed, and may be terminated early (and Chrome Plus International, Inc. may be required to repay amounts previously abated), in the event of any failure by Chrome Plus International, Inc., to perform its obligations under the Economic Development Incentive Agreement it has executed with the City.
3. The Economic Development Incentive Agreement between the City of Wichita and Chrome Plus International, Inc. is hereby approved.
4. The Office of Urban Development shall be responsible for monitoring the performance of Chrome Plus International, Inc. and shall provide annual reports on such performance.
5. Such exemption is subject to verification that the level of employment at the time of the completion of the project is at least equal to the level of employment as stated in Chrome Plus International, Inc.'s written request for ad valorem tax exemptions as presented to the City Council and to administrative staff and dated December 19, 2011 and as stated in Chrome Plus International, Inc.'s annually approved EEO/AA Plan.

6. Such exemption may hereafter be withdrawn by the City Council upon a finding that Chrome Plus International, Inc. no longer is entitled to such exemption in accordance with the Economic Development Incentive Agreement, which Chrome Plus International, Inc. has executed with the City.

7. The City Council may, at its discretion, require Chrome Plus International, Inc. to return all funds exempted if there is a failure to meet the terms and conditions of the Economic Development Incentive Agreement which Chrome Plus International, Inc. has executed with the City.

8. Upon finding that Chrome Plus International, Inc. has failed to meet its obligations under the Economic Development Incentive Agreement, the City Council shall require the repayment of all prior amounts of taxes that have been exempted and shall withhold any future exemption of taxes on Chrome Plus International, Inc.'s expansion project. All repayments shall be redistributed to the local taxing authorities at the proper taxing rates.

9. This Ordinance shall be in full force and effect from and after its passage and publication in the official City paper.

Passed by the governing body of the City of Wichita, Kansas this 22, day of May, 2012.

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Carl Brewer, Mayor

ATTEST:

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Karen Sublett, City Clerk

Approved as to Form:

---

Gary E. Rebenstorf, City Attorney

# Economic Development Incentive Agreement

**THIS ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT** (the “Agreement”) is made and entered into on this \_\_\_\_ day of \_\_\_\_\_, 2012, by and between the City of Wichita, Kansas, hereinafter referred to as the “City,” and Chrome Plus International Inc. hereinafter referred to as the “Company.”

**WHEREAS**, the Company currently operates a facility in Wichita, Kansas, for manufacturing of composite materials, and, as of December 31, 2012 will have completed an expansion by constructing and equipping an expansion to their facility; and

**WHEREAS**, both the City and the Company desire for the Company to continue operating its business in Wichita, Kansas; and

**WHEREAS**, the City desires to increase employment opportunities for the citizens of Wichita, Kansas, and to further the other goals advanced by its economic development incentive policy; and

**WHEREAS**, the Company warrants that it is capable of, and desires to, increase the number of employment positions at its Wichita, Kansas facility; and

**WHEREAS**, the City has designed an economic development incentive program to accomplish its goal of increasing employment opportunities in Wichita, Kansas; and

**WHEREAS**, the purpose of this Agreement is to state the terms and conditions under which the City will cooperate in furnishing said economic development incentives.

**NOW, THEREFORE**, in consideration of the mutual conditions, covenants and promises contained herein, the parties hereto agree as follows:

1. **THE COMPANY.** The Company agrees (to the extent not already hitherto performed) that it shall do the following:
  - A. Between January 1, 2012 and December 31, 2012, the Company will have completed the construction of a new facility at its manufacturing facility, located at 3939 W. 29<sup>th</sup> St. South, Wichita, Kansas, at a cost of \$2,250,000, to be used exclusively for the purposes of manufacturing articles of commerce;
  - B. Maintain, throughout the period from the date of this Agreement to December 31, 2018 employment of not less than forty-eight (48) employees at the existing manufacturing facility;

- C. On or prior to January 1, 2018, the Company will add an additional thirty (30) new jobs at the new manufacturing facility, and thereafter, maintain employment of not less than ninety-five (95) employees at combined manufacturing facility, through at least December 31, 2022;
- D. During the entire term of this Agreement, the Company will continuously maintain the average wage paid to its employees at a level (1) equal to or greater than the average wage paid by businesses in the Wichita Metropolitan Statistical Area with the Company's NAICS classification, or alternatively, (2) greater than the average wage for all jobs in the Wichita Metropolitan Statistical Area excluding wages paid by businesses classified in NAICS Sector 326;
- E. During the entire term of this Agreement, the Company will meet any Equal Employment Opportunity/Affirmative Action goals set forth in its periodic filings with the City, and will annually file its Equal Employment Opportunity/Affirmative Action Plan with the City;
- F. During the entire term of this Agreement, the Company will timely pay all *ad valorem* property taxes levied on its real or personal property within Sedgwick County, Kansas;
- G. During the entire term of this Agreement, the Company will ensure that it does not discriminate or permit discrimination against any person on the basis of race, color, national origin or ancestry, religion, sex, age, disability or marital status in its operations or services, and the Company will comply with all applicable provisions of the Civil Rights Act of 1964, as amended; the Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375 and 11141; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Kansas Act Against Discrimination, K.S.A. 44-1000, *et seq.*; the Code of the City of Wichita Section 2.12.950; and, any laws, amendments or regulations promulgated thereunder, including any Ordinance of the City of Wichita, Kansas, presently existing or hereafter enacted, which pertains to civil rights and equal employment opportunity;
- H. During the entire term of this Agreement, the Company will comply with all applicable governmental laws, rules and regulations; and,
- I. During the entire term of this Agreement, the Company will cooperate with any annual compliance audit procedure(s) the City may adopt to monitor compliance with conditions, including any annual reports required of the Company and any inspection of the Company's premises or interviews with the Company's staff.

2. **EFFECT OF COMPANY'S BREACH; REMEDIES.** The Company acknowledges that in the event of its noncompliance with any of its obligations or agreements under the foregoing Section 1, the City will not have received the social and economic development benefits expected in connection with its entry into this Agreement and its furnishing of the economic development incentives provided for hereunder, and the resulting loss to the City will be difficult to measure. In such event, Company shall be required to pay to the City, as liquidated damages, or as a payment in lieu of tax, an amount equal to the *ad valorem* taxes that would theretofore have been payable but for the tax exemption referred to in Section 3 of this Agreement, and the City shall be entitled to take action to cancel and revoke such exemption for any subsequent period. No delay or omission by the City to enforce any of its rights as provided for herein shall impair such right, nor shall any such delay or omission be construed to be a waiver of such right.
3. **THE CITY.** So long as the Company meets and performs its obligations under this Agreement, it is the City's intention that the 20,000 square foot addition constructed by the Company pursuant to Section 1.A., above, shall be entitled to an 78.75% exemption from *ad valorem* taxation for a period of five (5) calendar years, commencing January 1, 2013, provided proper application is made therefor. It is the City's further intention that the building expansion shall be entitled to a 78.75% exemption from *ad valorem* taxation for an additional period of five years from January 1, 2018 to December 31, 2022, subject to the approval, in 2017 of the then current governing body. The City agrees that, during the term of this Agreement, and so long as the Company continues to meet and perform all of its obligations under this Agreement, the City will reasonably cooperate with the Company's efforts to perfect the intended exemption before the Kansas Court of Tax Appeals, and to make all necessary annual filings required to maintain such *ad valorem* tax exemption in full force and effect during the term of this Agreement, in accordance with K.S.A. 79-210 *et seq.*
4. **TERM.** This Agreement shall commence on the date first written above, and shall end on December 31, 2022.
5. **INCORPORATION OF APPENDIX.** Appendix A (Revised Non-Discrimination and Equal Employment Opportunity/Affirmative Action Program Requirements Statement for Contracts or Agreements) is attached hereto and made a part hereof as if fully set out herein.
6. **ENTIRE AGREEMENT.** This Agreement and any Appendices attached hereto contain all the terms and conditions agreed upon by both parties. No other understandings, oral or otherwise, regarding the subject matter of this agreement shall be deemed to exist or to bind any of the parties hereto. Any agreement not contained herein shall not be binding on either party, nor of any force or effect. In the event of a conflict between the terms of this Agreement and the terms

contained in an Appendix, Statement of Work or other attachment, the terms of this Agreement will control.

7. **NOTIFICATION.** Notifications required pursuant to this Agreement shall be made in writing and mailed to the addresses shown below. Such notification shall be deemed complete upon mailing.

City: Office of Economic Development  
Attn: Economic Development Administrator  
455 North Main, 13<sup>th</sup> Floor  
Wichita, Kansas 67202

and

Department of Law  
Attn: City Attorney  
455 North Main, 13<sup>th</sup> Floor  
Wichita, Kansas 67202

Company: Chrome Plus International Inc.  
3939 W. 29<sup>th</sup> St. South  
Wichita, KS 67212

8. **AUTHORITY.** Each person executing this Agreement represents and warrants that they are duly authorized to do so on behalf of the entity that is a party hereto.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement the day and year first above written.

CITY OF WICHITA, KANSAS

ATTEST:

\_\_\_\_\_  
Carl Brewer, Mayor

\_\_\_\_\_  
Karen Sublett, City Clerk

CHROME PLUS INTERNATIONAL INC.

APPROVED AS TO FORM:

\_\_\_\_\_  
Gary Rebenstorf  
Director of Law

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## **APPENDIX A**

### **REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS**

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements:

- A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.
- B. Requirements of the State of Kansas:
  - 1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
  - 2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
  - 3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
  - 4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;



5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.
- C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:
1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;
  2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
  3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;
  4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.
  5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars (\$5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.
2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

\_\_\_\_\_PUBLISHED IN THE WICHITA EAGLE ON \_\_\_\_\_

**NOTICE OF PUBLIC HEARING FOR  
GRANTING AN AD VALOREM TAX  
EXEMPTION FOR ECONOMIC  
DEVELOPMENT PURPOSES  
BY THE CITY OF WICHITA**

Public notice is hereby given that the governing body of the City of Wichita, Kansas will conduct a public hearing in connection with the granting by the City of Wichita, Kansas of a tax exemption for Economic Development purposes to Chrome Plus International, Inc. Such hearing will be held on May 15, 2012, at 9:00 a.m., or as soon thereafter as possible, in the Council Chambers at City Hall, 455 North Main, Wichita, Kansas 67202.

Said tax exemption is proposed to be granted by the City for the construction of a building and purchase of certain manufacturing equipment under the authority of Article 11, Section 13, of the Kansas Constitution. Chrome Plus International, Inc. is located at 3939 West 29<sup>th</sup> Street South in southwest Wichita. The governing body of the City will not adopt an Ordinance authorizing the exemption of ad valorem taxes until said public hearing has been concluded.

A copy of this notice, together with a copy of the proposed Ordinance for the governing body of the City to grant such ad valorem tax exemption is on file in the office of the City Clerk and is available for public inspection during normal business hours. In the event that said tax exemption is not ultimately put into effect for any reason, the City of Wichita, Kansas, shall not be deemed to have assumed or incurred any liability or obligation to Chrome Plus International, Inc., or any other party by virtue of the above mentioned Ordinance or by virtue of any proceedings or actions taken in connection therewith.

All persons having an interest in this matter will be given an opportunity to be heard at the time and place specified. If, for any reason, the matter is continued from the time and place specified in this notice, said matter shall be heard at the time and date established by the City Council at the time set for the hearing as specified in this notice.

City of Wichita  
City Council Meeting  
May 15, 2012

**TO:** Mayor and City Council

**SUBJECT:** Public Hearing, Request for Resolution of Support for Application for Housing Tax Credits; Rushpointe Apartments (District I)

**INITIATED BY:** Housing and Community Services Department

**AGENDA:** New Business

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**Recommendation:** Close the public hearing, adopt the resolution of support for the application for Housing Tax Credits, subject to all local building and zoning codes, ordinances and any additional design review requirements, with waiver of the 20% market-rate unit requirement.

**Background:** The Housing Tax Credit Program is administered by the Kansas Housing Resources Corporation. Enacted in the Tax Reform Act of 1986, the Housing Tax Credit Program is designed to secure private equity capital for the development of affordable rental housing. The Program can provide as much as 55%-60% of the total development cost, which reduces the amount of debt financing in affordable rental housing developments. This allows lower rents and greater affordability. The State receives a tax credit allocation from the Federal government, and requires developers/owners to obtain a resolution of support from the local government, when submitting applications for financing through the program.

The City has received a request from Mark Cox and Kansas Elks Training Center for the Handicapped (KETCH) for a City Council resolution of support for an application for 9% Housing Tax Credits in connection with the development of a 16-unit studio apartment complex, to be located at the northwest corner of 32<sup>nd</sup> Street North and Gouverneur.

Under the City's adopted Housing Tax Credit (HTC) Policy, developers/owners must present proposed Housing Tax Credit projects to the applicable District Advisory Board (DAB). The policy also requires a review by the City's Development Coordinating Committee (DCC). The Planning Department and the Office of Central Inspection (OCI) also review the project for zoning and design appropriateness and provide comment regarding consistency with neighborhood plans, if applicable. Once the project is reviewed by the DAB, DCC, Planning and OCI, it is forwarded to the City Council for a public hearing, with a staff recommendation regarding the resolution of support for the Housing Tax Credit application.

**Analysis:** The proposed project will offer 16 studio apartment units, within two buildings. The City's HTC Policy requires a set-aside of 20% of the units for market-rate tenants. Waiver of this requirement is requested, as the project will serve citizens with intellectual and/or developmental disabilities, a special needs population. The HTC Policy provides for a waiver of the 20% market-rate unit requirement when special needs populations are exclusively served. According to the HTC application, preliminary tax credit rent amounts are estimated to be \$359 per month, net of utility allowances.

The Office of Central Inspection reviewed the proposed project. OCI staff noted that the property parcel is part of a larger Community Unit Plan (CUP) development (DP-95) and is currently zoned General Office (GO) with stipulations allowing town homes and duplexes as well as some limited commercial uses. Based on information provided by the developer, it was determined that the structures/uses proposed would meet the City and State definition of duplex construction based on occupant loads and internal building separation features. This interpretation would allow the use to reside within the current

allowances granted by the CUP. The CUP requires a 25' building setback on the front (32<sup>nd</sup> Street North), a 20' rear setback, and 20' side yard setbacks. It appears that the proposed buildings could be placed within these limits. A lot split would be required and the interior side yard setback easements, if any, could be established when filing for the lot split. Based on the preliminary elevation drawings, the height of the buildings would comply with the 35' height limit established in the CUP.

OCI staff further indicated that there are no flood zone issues, and that storm water concerns may be addressed with the drainage plan to be submitted as part of the platting process. Proposed parking capacity appears to meet the requirements established within the CUP. Landscape buffering and screening will be required as prescribed by the CUP, in addition to approval of the exterior building elements for compatibility.

The Planning Department also reviewed the proposed project, and indicated that the site does not have access from 32<sup>nd</sup> Street North, as both of the previously granted access points are currently utilized by a school adjacent to the site. Planning staff indicated that the developer was advised to file a vacation case, with respect to the platted access control. The City Traffic Engineer does not oppose the granting of an additional access point.

DAB I voted (6-0) to recommend adoption of the resolution of support. The DCC also voted to recommend adoption of the resolution of support.

Housing and Community Services (HCS) staff believes that the proposed project will provide safe, clean, affordable rental housing, and recommends adoption of a resolution of support by the City Council.

The resolution of support will not constitute final plan or design approval. If the project is awarded Housing Tax Credits, the project developer must comply with all requirements associated with appropriate plan reviews required for issuance of a City building permit. These reviews will include compliance with the City of Wichita's Housing Tax Credit Policy design guidelines. Further, the developer must comply with any additional reviews that may be requested by the City Council member in whose district the proposed project is planned.

Vetting of the developer was conducted by Office of Urban Development staff. There were no outstanding issues noted.

**Financial Considerations:** According to the information provided, the total development cost is estimated to be \$2,745,103. In addition to equity generated by the sale of the Housing Tax Credits, the developer will utilize a general partner contribution and Affordable Housing Program funding from the Federal Home Loan Bank, to finance the project. The City will not be involved in the project financing.

**Goal Impact:** The proposed project contributes to the Economic Vitality and Affordable Living goals by creating affordable housing.

**Legal Considerations:** The Law Department has reviewed the resolution document and approved it as to form.

**Recommendations/Actions:** It is recommended that the City Council close the public hearing, adopt the resolution of support for the application for Housing Tax Credits, subject to all local building and zoning codes, ordinances and any additional design review requirements, with waiver of the 20% market-rate unit requirement.

**Attachments:** Resolution document.

## **RESOLUTION NO. 12-111**

### **A RESOLUTION ESTABLISHING SUPPORT OF THE DEVELOPMENT OF AFFORDABLE HOUSING IN THE CITY OF WICHITA, KANSAS.**

WHEREAS, the City of Wichita, Kansas has been informed by Mark Cox and Kansas Elks Training Center for the Handicapped, Inc., (KETCH) that a housing tax credit application will be filed with the Kansas Housing Resources Corporation for the development of affordable rental housing to be located on a site legally described as follows:

Lot 2, Except the West 240 Feet thereof, Block 1, Fantasea II Addition to Wichita, Sedgwick County, Kansas

WHEREAS, this housing development will have a total of 16 studio apartment units, within two buildings, all to be assisted through the Housing Tax Credit program, designed to serve tenants with developmental disabilities.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WICHITA, KANSAS:

That the Governing Body of the City of Wichita, Kansas supports and approves the development of the aforesaid housing in our community, subject to city ordinances and the building permit process. This Resolution is effective until May 15, 2014. In the event that any of the characteristics mentioned above should change prior to the issuance of a building permit, this resolution is null and void.

This resolution does not constitute design or plan approval by the City of Wichita. The project design must comply with the City of Wichita's Housing Tax Credit Policy design guidelines, which will be determined by the Metropolitan Area Planning Department and the Office of Central Inspection, after the project is approved for tax credits. During that review, complete building plans may be submitted to the Council Member, at the Council Member's request, prior to issuance of a building permit. All projects must comply with all applicable building codes, zoning codes, ordinances, and requirements.

ADOPTED BY THE GOVERNING BODY OF THE CITY OF WICHITA, this 15th day of May, 2012.

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Carl Brewer, Mayor

ATTEST:

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Karen Sublett, City Clerk

Approved as to Form:

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Gary E. Rebenstorf, City Attorney

City of Wichita  
City Council Meeting  
May 15, 2012

**TO:** Mayor and City Council

**SUBJECT:** Public Hearing, Request for Resolution of Support for Application for Housing Tax Credits; Residences at Linwood (District III)

**INITIATED BY:** Housing and Community Services Department

**AGENDA:** New Business

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**Recommendation:** Close the public hearing, adopt the resolution of support for the application for Housing Tax Credits, subject to all local building and zoning codes, ordinances and any additional design review requirements, with partial waiver of the 20% market-rate unit requirement.

**Background:** The Housing Tax Credit Program is administered by the Kansas Housing Resources Corporation. Enacted in the Tax Reform Act of 1986, the Housing Tax Credit Program is designed to secure private equity capital for the development of affordable rental housing. The Program can provide as much as 55%-60% of the total development cost, which reduces the amount of debt financing in affordable rental housing developments. This allows lower rents and greater affordability. The State receives a tax credit allocation from the Federal government, and requires developers/owners to obtain a resolution of support from the local government, when submitting applications for financing through the program.

The City has received a request from Brent Hurst of MH Development, LLC, for a City Council resolution of support for an application for 9% Housing Tax Credits in connection with the renovation of 180 units of the Linwood Apartments.

Under the City's adopted Housing Tax Credit (HTC) Policy, developers/owners must present proposed Housing Tax Credit projects to the applicable District Advisory Board (DAB). The policy also requires a review by the City's Development Coordinating Committee (DCC). The Planning Department and the Office of Central Inspection (OCI) also review the project for zoning and design appropriateness and provide comment regarding consistency with neighborhood plans, if applicable. Once the project is reviewed by the DAB, DCC, Planning and OCI, it is forwarded to the City Council for a public hearing, with a staff recommendation regarding the resolution of support for the Housing Tax Credit application.

**Analysis:** Linwood Apartments is located at 2002 S. Hydraulic. According to the application, a total of 180 apartment units would be renovated under what is to be considered as "Phase 1" of the project. These units include 34 studio units, 112 one-bedroom units, and 34 two-bedroom units. The renovation plan includes refinished hardwood floors or new carpet, new countertops, vanities, sinks, light fixtures, plumbing fixtures, and HVAC systems, as well as full interior repainting, plumbing upgrades and electrical system upgrades. Exterior renovations include new roofing, landscaping and lighting, as well as brick repair and tuck-pointing. Amenities will include a community center/clubhouse, in-unit washing machines and dryers, and walking distance access to Linwood Park.

The City's HTC Policy requires a set-aside of 20% of the units for market-rate tenants. The developer is requesting partial waiver of this requirement, and is seeking to provide 10% of the units as market-rate units, citing extenuating circumstances related to market conditions. The developer believes the market conditions support a deviation from the guideline, because the additional income that could be generated from additional non-HTC units would be minimal, at best, and would not support additional debt service.

Further, the market study reflects a demand for affordable housing in the area. The rent amounts for HTC units are projected to range from \$350 to \$510. The market-rate units are projected to rent for the same amount.

The Planning Department reviewed the proposed project, and has confirmed that the current land use is consistent with the zoning designation for the site. The renovation project may trigger parking lot screening requirements, if the construction value is greater than 50% of the appraised value and/or if new parking stalls are created. Mt. Vernon and Hydraulic are classified as arterial streets. Any new parking areas located adjacent to these streets or adjacent to residential zoning would require additional parking lot screening.

The Office of Central Inspection also reviewed the project and noted that the planned renovations and the proposed reconfiguration of some buildings would be compliant with the current zoning designations, and that a total of 242 parking spaces would be required, given the unit size distribution.

DAB III voted (8-0) to recommend adoption of the resolution of support. The DCC also voted to recommend adoption of the resolution of support, with partial waiver of the market-rate unit requirement.

Housing and Community Services (HCS) staff believes that the proposed project will provide safe, clean, affordable rental housing, and recommends adoption of a resolution of support by the City Council.

The resolution of support will not constitute final plan or design approval. If the project is awarded Housing Tax Credits, the project developer must comply with all requirements associated with appropriate plan reviews required for issuance of a City building permit. These reviews will include compliance with the City of Wichita's Housing Tax Credit Policy design guidelines. Further, the developer must comply with any additional reviews that may be requested by the City Council member in whose district the proposed project is planned.

Vetting of the developer was conducted by Office of Urban Development staff. There were no outstanding issues noted.

**Financial Considerations:** According to the information provided, the total development cost is estimated to be \$5,429,632. The project will be financed with Housing Tax Credits, and potentially, Historic Tax Credits, and a loan provided by the investor/ownership entity. The City will not be involved in the project financing.

**Goal Impact:** The proposed project contributes to the Economic Vitality and Affordable Living goals by creating affordable housing.

**Legal Considerations:** The Law Department has reviewed the resolution document and approved it as to form.

**Recommendations/Actions:** It is recommended that the City Council close the public hearing, adopt the resolution of support for the application for Housing Tax Credits, subject to all local building and zoning codes, ordinances and any additional design review requirements, with partial waiver of the 20% market-rate unit requirement, in order to provide for a total of 18 market-rate units.

**Attachments:** Resolution document.



## **RESOLUTION NO. 12-112**

### **A RESOLUTION ESTABLISHING SUPPORT OF THE DEVELOPMENT OF AFFORDABLE HOUSING IN THE CITY OF WICHITA, KANSAS.**

WHEREAS, the City of Wichita, Kansas has been informed by MH Development, LLC, that a housing tax credit application will be filed with the Kansas Housing Resources Corporation for the development of affordable rental housing to be located on a site legally described as follows:

Lots 1 through 28, Block A, and vacated North/South alley lying in Block A, Except the North 10' of lots 1 and 28 and Except that portion of alley lying in between lots 1 and 28, AND Lots 3 through 25, Block B and vacated North/South alley lying in Block B, Except the North 25' of lot 25 and the West ½ of vacated alley to the East of the North 25' of lot 25, and except that portion of lot 3 beginning at the Northeast corner of lot 3, thence West 215'; thence South 22', thence East 62' thence Southeasterly to the East line; thence Northwesterly 45' to beginning and Except the East ½ of vacated alley adj., Wichita, Sedgwick County, Kansas.

WHEREAS, this housing development will have a total of 180 apartment units, with 162 units considered to be assisted through the Housing Tax Credit program. Amenities to include a clubhouse/community room and in-unit washing machines and dryers.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WICHITA, KANSAS:

That the Governing Body of the City of Wichita, Kansas supports and approves the development of the aforesaid housing in our community, subject to city ordinances and the building permit process. This Resolution is effective until May 1, 2014. In the event that any of the characteristics mentioned above should change prior to the issuance of a building permit, this resolution is null and void.

This resolution does not constitute design or plan approval by the City of Wichita. The project design must comply with the City of Wichita's Housing Tax Credit Policy design guidelines, which will be determined by the Metropolitan Area Planning Department and the Office of Central Inspection, after the project is approved for tax credits. During that review, complete building plans may be submitted to the Council Member, at the Council Member's request, prior to issuance of a building permit.

All projects must comply with all applicable building codes, zoning codes, ordinances, and requirements.

ADOPTED BY THE GOVERNING BODY OF THE CITY OF WICHITA, this 15th day of May, 2012.

\_\_\_\_\_  
Carl Brewer, Mayor

ATTEST:

\_\_\_\_\_  
Karen Sublett, City Clerk

Approved as to Form:

\_\_\_\_\_  
Gary E. Rebenstorf, City Attorney

City of Wichita  
City Council Meeting  
May 15, 2012

**TO:** Mayor and City Council  
**SUBJECT:** Wichita Transit Service Reductions (All Districts)  
**INITIATED BY:** Wichita Transit  
**AGENDA:** New Business

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**Recommendation:** Approve a service reduction that will eliminate weekday half-hour peak service, service to Goodwill, and the Westside Connector route.

**Background:** On March 27, at a City Council workshop, Wichita Transit presented options for transit improvements and made known the immediate need to balance a projected \$808,839 deficit for the 2012 budget. Lower-than-expected revenues and high operating costs have negatively impacted the Transit Fund outlook. The 2012 Adopted Budget included \$2.5 million in estimated farebox revenues, based on a rate increase approved in 2011. However, staff estimates farebox revenue will be \$2.2 million in 2012, due to higher-than-expected elasticity in demand. In addition, the 2012 Adopted Budget was based on a transfer from the Contingency Reserve Fund of \$325,000. However, due to shortfalls in 2011, most of this amount was already transferred and is no longer available in 2012. On a positive note, additional federal grant funds to offset fuel costs have been awarded, reducing the projected deficit to approximately \$500,000.

**Analysis:** To ensure that the Transit Fund remains financially viable in the future, a number of options for service reductions have been identified by staff and are summarized below:

1. *Eliminate weekday peak half-hour service* Approximately 650 rides are provided during morning and evening half-hour peak service daily. There would be savings from decreased operating costs. Savings would be contingent on reduced staffing, in addition to buses not operating half-hour service during the week.
2. *Eliminate the Goodwill XO bus* This bus operates one morning and one afternoon trip daily to Goodwill Industries at 37<sup>th</sup> and Oliver.
3. *Eliminate the Westside Connector route* This route operates in the northwest quadrant of the City and provides service to Mid-Continent Airport.
4. *Eliminate the Meridian shuttle route* This route travels in a loop north and south on Meridian and West streets and connects with the West Maple and West Central routes.
5. *Eliminate the Rock Road shuttle route* This route travels in a loop north and south on Rock Road and connects with the East 17<sup>th</sup>, East 13<sup>th</sup>, East Central, College Hill, and East Harry routes.
6. *Eliminate Saturday service on all routes* Approximately 950 rides are provided each Saturday. There would be savings from decreased operating costs. Savings would be contingent on reduced staffing, in addition to buses and vans not operating on Saturdays.

These options were presented to the Transit Advisory Board on April 13, 2012. At this meeting, board members recognized that the elimination of Saturday service would result in overwhelming opposition

from the public. With the goal of preserving Saturday service, the board chose to recommend eliminating weekday peak half-hour service. Peak service currently operates every half hour but would move to hourly service if the recommendation is approved. Riders would experience lower convenience, but service would still be available. The Transit Advisory Board also recommended the elimination of the Westside Connector and Goodwill routes to meet the projected savings needed. The Westside Connector and Goodwill routes are the lowest performing routes. Staff considered extending service to the airport through the West Maple route but determined it could not be accomplished without adding another bus, which would not be cost effective.

In response to opposition of the elimination of the Goodwill bus, staff will study alternatives that would accomplish similar savings and still maintain service.

A public hearing was held at 6:30 PM on April 30 in the City Council chambers. One-hundred and seven people were in attendance. The public showed much opposition to eliminating peak half-hour service and the two routes proposed for elimination. Many questioned how riders that use the Westside Connector and Goodwill buses would get to work and if the hourly buses would be too full to accommodate all passengers during peak hours.

Comments that were sent in reply to the public hearing notice are attached.

**Financial Consideration** Without service adjustments, the Transit Fund is projected to have an operating loss estimated at nearly \$.5 million in 2012. With additional funding from KDOT anticipated in 2013, the current system can be operated at nearly breakeven status in 2013. Longer term, in 2013 and 2014, additional funding from KDOT is expected to supplement current Transit resources. Even with the additional KDOT funding, with the current service level, the Transit Fund is expected to operate at a deficit of approximately \$200,000 in 2014. Alternatively, implementing the service adjustments would solidify the longer term outlook for the fund through 2014, producing an estimated cumulative operating surplus of \$1 million by year-end 2014. This would provide a potential buffer against future funding short falls and could enable the Transit Fund to repay amounts loaned in 2011.

**Goal Impact:** To Ensure an Efficient Infrastructure by maintaining and optimizing public facilities and assets.

**Legal Consideration:** Both the Transit Advisory Board meeting on April 13 and the public hearing conducted on April 30, 2012, were properly noticed and held in compliance with KOMA requirements. Cessation of the routes as recommended will not violate the terms of any federal grant.

**Recommendation/Actions:** It is recommended that the City Council approve a service reduction that will eliminate weekday half-hour peak service, service to Goodwill, and the Westside Connector route.

**Attachments:** Comments sent or given to Wichita Transit staff in reply to the public hearing notice.

## LOCAL RAPID TRANSIT/TRANSPORTATION STUDY--POSITION

**LWV Wichita/Metro supports the implementation of a Rapid Transit System, within the metropolitan urban area of the City of Wichita, which would provide increased availability of public transportation for all the citizens of the area, at an affordable cost. A successful plan would include increased scheduling, change to a grid system, and include a dedicated source of funding—for example a sales tax. The LWV-Wichita/Metro supports a goal of increased ridership, lowered amount of automobiles on the road and improvement of air quality and lower street/highway construction costs through the implementation of an improved Rapid Transit/Transportation. Rapid Transit, as supported by the LWV-Wichita/Metro could include buses, rail, trolley and perhaps other forms of transportation and should be regional in scope.**

### **BACKGROUND:\**

The Wichita League has included the subject of transportation in its position on rejuvenating downtown, but needs to be able to speak to the broader issue of overall Rapid Transit.

From 1900-1957, the metro area of Wichita was transit based, with 15 million riders a year. Currently, the number is 2 million a year with the buses averaging 23 people riding, per hour. In 1957, President Eisenhower began building the highway system and more people began traveling in cars.

The Wichita Transit was, for many years, stagnate with no increase in budget. Until twelve years ago, it was a regional transit (City & County). Chris Churches, then City Manager dismantled all the boards and it became a city department. For several years, Wichita Transit was managed by a private contracting company. They kept the contract, as long as they did not ask for anything. Unfortunately, in 2008, the company got into trouble with Federal Regulations and had 71 violations. Also, in 2008, gasoline prices increased by 15%. The City cancelled the contract, and asked Mr. Vinson, to become the Director and changes are being planned.

The Transit System must be expanded beyond the Downtown plan. The University of Kansas approached Wichita Transit and asked to do

Graduate study of the Transit System. They provided 1500 volunteer hours and came up with a plan. It has been presented to the city in a workshop and is part of the WAMPO plan.

1. First, a survey was done, which showed the citizens want a better transit system.
2. Currently, Wichita spends \$27.42 per capita on transportation, while Topeka spends three times that amount.
3. The current "Hub and Spoke" system is the cheapest method, but the most inconvenient. The system works in a way that every half hour a bus pulls into the downtown station. However, it takes four buses changes to get from the East side to the West side of town.
4. The "Grid System" works better as a person has to change buses only once. This system would be expanded so it covers more area.
5. The current system costs \$12 million a year and the "Grid System" would double that cost.
6. The buses schedule, at the present time, is 6:00 am-6:30 pm. Suggested Change would be 5:00 am-10:00 pm (Monday- Saturday) and 6:00 am-6:00 pm on Sunday.
7. The wait, on a regular day is one hour and during peak times, one half hour. Recommended changes would be one half hour on a regular day and fifteen minutes during peak times.
8. Commuter Express Routes for buses with Douglas as the Transit Corridor for a dedicated rail trolley running every ten minutes is part of the BRT (Bus Rapid Transit). Kansas City already has a similar arrangement.
9. The cost for these changes would require a budget of \$50 million. It could be broken down into incremental stages, but would need a dedicated source of funding. City of Lawrence has already done this. In contrast, a new intersection/interchange costs at least \$200 million each and \$1 million, per mile, to repave a road. It costs around \$50 million for parking garages. Other things to consider, include an aging population and air quality (1 bus = 1 ½ cars)

To improve overall transportation would take \$56 million a year. The current plan that is being submitted by KU would cost \$23 million a year and that is twice the current transportation budget.

At this time, there is hope that a ¼ cent sales tax can be assessed to support Rapid Transit in Wichita.

1-RANSIT

Operating Costs up to 10-30 mill.

Taxi's  
Start at 2.00 flag + add  
1.25 ea. aft. mile  
—————→ 3-5000<sup>00</sup> per month  
Consistent

Consument

Disabled

Students  
elderly

Non-Disabled

Meeting w/ City Council  
Jan. 27  
30 AM

Mar. 2  
9:30 AM  
Floor  
Leel

9  
Floor  
Hc

1<sup>st</sup> Floor  
City Hall  
5.04 up  
→

Monday

3/12/2012

go talk to

Jim Shelton

Richard

Revised

Funling City

Best

City Council

How to make  
Both parties happy

Donate ad-30 to  
ad-transit  
to April

Disc

[illegible]

Leadership

~~Prize Card~~

We need the Ridership + operating costs to level out evenly + fairly for both sides or else the other side is affected either with the cost or lost money.

Operating Costs

Graph

35

Graph

35

# Pros + Cons

## Wichita Transit

Con 30 days = 90<sup>00</sup>

Con gas is going up to 5<sup>00</sup> per gallon (Diesel)  
 ↑  
 less miles per gallon

more miles to the gallon → Pro CNG Buses by 2014

Making Bus Passes  
 ↓

\$ 5,000.00 - 10,000.00

Ink & 4-500.00  
 Printer

To bring in new buses is going to cost up to 10-20 mill.

1  
 x 1.75  
 x 20  
 0 0 0  
 35 0  
 35.00

35.00 → Non Disabled  
 1.75 + .25 transfer  
 Compressed Natural Gas Buses

2.00  
 x 20  
 0 0 0  
 4 0 0  
 40.00

## Consumer/Disabled

Con most can't afford 90<sup>00</sup> but want to ride all month long

Pro Sunday Service added & up to or at 24 hrs

Pro 30 min all day long every day

Pro Affordable passes

20 limited rides doesn't last long enough for the month Con

most feel prices are too High to ride the bus any more Con/Pro

20 rides - .85¢ + .10¢ transfer

1 day  
 3 day  
 7 day  
 30 day = 90<sup>00</sup>

.85¢  
 x 20  
 0 0  
 17 0  
 17.00

.45  
 x 20  
 0 0  
 19 0  
 19.00

Pro Possibly do more unlimited ride Passes than the limited rides passes



# Stop City of Wichita From Removing Transit System

Greetings,

Wichita Transit Director and Board

-----

Wichita Transit is proposing to eliminate weekday peak-hour bus service, daily bus service to Goodwill, and the Westside Connector bus route effective June 9, 2012.

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**Do Not Remove** Westside Connector (route #19), Rock Road Shuttle (route #11), Meridian Shuttle (route #6), Weekday Peak-Hour Bus Services, Saturday Bus Services

**The people that use these services are in need of them NOT being removed are as follows:**

- Kid's use the bus's for School's and Daycare
- Elderly
- Disabled
- The Blind
- People without cars
- People with Suspended Drivers Licenses
- People with car problems
- Bus Drivers will be un-employed

- Offender Placement in Community Residential or KDOC (Mandated)
- Wichita Work Release Program (Mandated)
- DCCCA Women's Recovery Center (Mandated)
- Homeless

Sincerely,


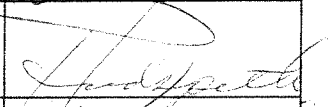
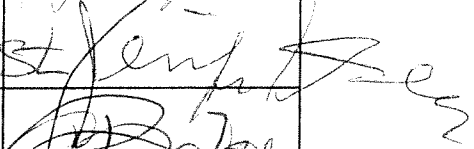

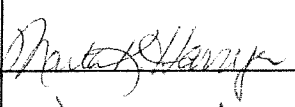
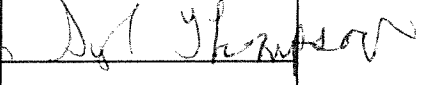
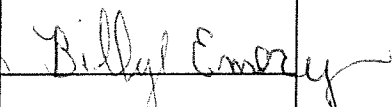
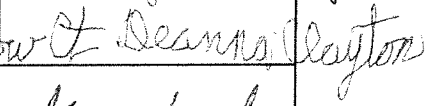
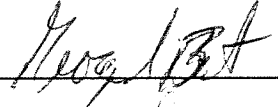
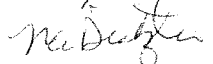
DATE	NAME	ADDRESS	SIGNATURE
4-23-12	Andrew Fricks	8920 W. 10th St	Andrew Fricks
4-23-12	James Bennett		James Bennett
4/23/12	Emily Grace	2564 Meadow Grove	Emily Grace
4/23/12	Maple Maize	Maple Maize	Stacy Martin
4-23-12	Wendy	Maple Elizabeth	Wendy
4-23-12	Bryon Primbs	201 N. F. 10th Ave	Bryon
4-23-12	James Williams	7416 W. Dorsey	James Williams
4-23-12	Tiffany Cleburne	7330 W. Dorsey	Tiffany
4-23-12	Kevin Cotton	401 S. Emporia	Kevin
4-23-12	David Poolman	Lot #507 2101 W. MacArthur	David Poolman
4-23-12	Lorrian Allsmann	1024 Lewellen	Lorrian Allsmann
4-23-12	Carla Edwards	1502 Spruce	Carla Edwards
4/23/12	Tracey Crawford	3824 E. Roseway Wichita 67210	Tracey Crawford

DATE	NAME	ADDRESS	SIGNATURE
4-23-12	John Brumm	1158 N. Waco	John Brumm
4-23-12	Daniel Spivey	6602 E. Harry APT 7K	Daniel Spivey
4-23-12	Charles Boone	2710 W. First 323N	Charles Boone
4-23-12	Stormy Johnson	Lorraine	Stormy Johnson
4-22-12	WILMA CARTER	22611 CHARLES	Wilma Carter
4-23-12	AUSTIN HOMAS	2205 N. Austin	Austin Homas
4-23-12	Gary Terry	734 N. Ridge	Gary Terry
4-23-12	Ellen Mae	455 W. 1st	Ellen Mae
4-23-12	Charmaine Odom-Hines	734 N. Ridge	Charmaine Odom-Hines
4-23-12	Ricky Baker	1821 Ridge RD	Ricky Baker
4-23-12	Tony Caleb	435 Emporia	Tony Caleb
4/23/12	Kati Cleverger	1430 Briarview	Kati Cleverger
4/23/12	Shawn Harbort	770 N. Luster	Shawn Harbort
4-23-12	Tiffany Harris	204 W. 18th	Tiffany Harris
4-23-12	JAMES MEDCALD	401 S. EMPORIA	James Medcald
4/23/12	Tom Phillips	7101 Shade Wichita	Tom Phillips

DATE	NAME	ADDRESS	SIGNATURE
4-23-12	Chrissy Larkin	222 C Elm 67214	Chrissy Larkin
4-23-12	April Indle	6913 Shook Ln 67217	April Indle
4-23-12	Dixie Dickens	10200 W. Maple	Dixie Dickens
4-23-12	Kandy Harris	300 E Central	Kandy Harris
4-24-12	Crystal Coles	930 N Market	Crystal Coles
4-24-12	Annamarie Johnson	5505 Zoo Boulevard	Annamarie Johnson
4-24-12	Kimberly Bonnaen, LAC	Wichita SPS 330 E. William	Kimberly Bonnaen, LAC
4-24-12	Elizabeth Stanley	2415 So. Charles Wich 67213	Elizabeth Stanley
4/24/12	Deb Witt	4500 S Hickory	Deb Witt
4/24/12	Debra Witt	4500 S Hickory	Debra Witt
4/24/12	Glenn Freeman	6927 W Wichita, KS 67215	Glenn Freeman
4/24/12	Connie Kingst.	1348 N. DENVER Wichita, KS 67212	Connie Kingst.
4/24/12	Shelby Singley	431 S All Hallows	Shelby Singley
4/24/12	Justin Singley	431 S All Hallows	Justin Singley
4-27-12	Barrell Shaw	315 N. Riverside	Barrell Shaw
4-27-12	Shawna Daniels	10105 Merton	Shawna Daniels

DATE	NAME	ADDRESS	SIGNATURE
4-27-12	Larry Bruner	401 S Emporia	Larry Bruner
4-27-12	Russell Rice	401 S Emporia	Russell Rice
4-27-12	Robert McMillan	401 S Emporia	Robert McMillan
4-27-12	Steve Gathui	401 S. Emporia	Steve Gathui
4-27-12	Paul Liversgood	401 S Emporia	Paul Liversgood
4-27-12	Jeremy Hands	401 S. Emporia	Jeremy Hands
4-27-12	Sean Wilson	401 S. Emporia	Sean Wilson
4/27/12	Shawn Stockman	401 S Emporia	Shawn Stockman
4/27/12	Jeff Roberts	401 S. Emporia	Jeff Roberts
4/27/12	Derek Starnell	401 S. Emporia	Derek Starnell
4/27/2012	Joe A. Garcia	Odessa TX 6734 W. 23	Joe A. Garcia
4/27/2012	Chris Ramirez	401 S. Emporia	Chris Ramirez
4-27-2012	Stanley Hubbard	401 S. Emporia	Stanley Hubbard
4-27-2012	Waylon Eberts	401 S. Emporia	Waylon Eberts
4-27-2012	Scott Osborn	401 S. Emporia	Scott Osborn
4-27-2012	Mark Sherman	401 S. Emporia	Mark Sherman

DATE	NAME	ADDRESS	SIGNATURE
4-27-12	Robert McNamee	2627 S. West	Robert McNamee
4/27/12	Kenneth Long	777 N. SILVERSPRING	Kenneth Long
4/27/12	Ellis Baker	7101 W. Shadel Ln	Ellis Baker
4-27-12	Pam Davis	Wichita 502 W 32nd Cir	Pam Davis
4-27-12	Diego A. Meneses	Wichita 6724	Diego A. Meneses
4-27-12	Carol Harper	9040 W. Westcott	Carol Harper
4-27-12	Brandon Kosi	Wichita, KS	Brandon Kosi
4-30-12	Kirsten Adams	1332 N. Douglas	Kirsten Adams
4-30-12	Keith Robinson	4480 S. Meridian	Keith Robinson
4-30-12	Rodney Bush	401 S Emporia	Rodney Bush
4-30-12	Lisa Grant	2120 E. 23rd Street	Lisa Grant
4-30-12	Georgetta Clark	4925 E Shadybrook	Georgetta Clark
4-30-12	Jason Clark	4925 E Shadybrook	Jason Clark
4-30-12	Cynthia Norton	3915 S. Seneca	Cynthia Norton
4-30-12	Eddie Melander	2511 N. Douglas	Eddie Melander
4-30-12	Eddie Melander	2511 N. Douglas	Eddie Melander

DATE	NAME	ADDRESS	SIGNATURE
	Andrew Krape		
4/30/12	Bill Wesley	1348 Denver Wichita KS	
4/30/12	Prosperity Wichita		
4/30/12	Jennifer 1185	Bedding St	
4-30-12	Carin Baker	609 N. Poplar	
4-30-12	Marty Hanger	16024 Hanger	
4-30-12	Dyl Thompson	308 N. Clayton	
4-30-12	Billy Emery	308 N. Clayton	
4-30-12	Deanna Clayton	1779 N. Woodrow St	
04-30-12	George Bates	3150 S. Broadway	
4-30-12	Nancy Dietzler	2724 E Douglas #300	

To the City council and the administration of the Transit Company,

On Facebook you folks didn't give me any clue as to how you are going to take care of those who use the bus to Goodwill and how you will help those who have to work out on the far west side. You also didn't say how the people who use the half hour rush hour buses were supposed to get around without having to leave far earlier to get to and from work.

Why is it you only have things half way set up? Why are you coming to us with your plans already set and not listening to those of us who actually use the half-assed system you have set up?

Why didn't you listen when so many folks said they would not be able to pay the cost you brought to us at the last meeting?

Why is it you think cutting things will help the system far more than putting more service out and getting more riders that way?

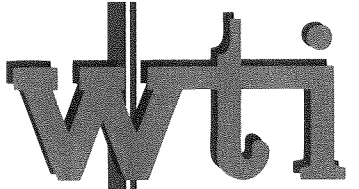
Putting Wifi sounds good, but in the long run, what is it going to cost us and what will you cut to keep it on the buses in the future?

I would like the answers in writing, so others can read this as well as what you can tell us here and now.

Stormy Johnston

*gryphonelder@yahoo.com*





"training since 1954"

ACCSC  
Accrediting Commission of Career Schools and Colleges

April 30, 2012

To whom it may concern:

Wichita Technical Institute has approximately 20 students who would be affected by the termination of the west side connector route. Many of these students are low income and may not be able to find another ride to school. I understand the challenges you face and there isn't an easy answer in this situation, but if you can find a way to leave the route intact, it would benefit these individuals greatly.

I've seen personally, the difference an education can make in someone's life. Let's give these students every possible chance of succeeding.

Sincerely,

Rob Winn  
Corporate Director of IT  
Wichita Technical Institute  
2051 S. Meridian  
Wichita, Ks. 67213  
316-943-2241

## Showalter, Talbert

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**From:** Michelle Grillot [MGrillot@usd259.net]  
**Sent:** Monday, April 30, 2012 1:36 PM  
**To:** Showalter, Talbert

Dear Mr. Showalter,

My name is Michelle Grillot. I am the Latchkey Director at Enterprise Elementary. I have been the Latchkey director for about 7 years. During that time we have been using the City Bus for field trips. I try to utilize the city bus anytime I can. It is much cheaper than using a school bus, it is also more comfortable and air conditioned. It is also a great learning experience for our children. Many of them have never been on the city bus and it is something they may need in the future.

I am concerned about the possible schedule changes, this may limit our use of the city bus. When scheduling field trips I have to schedule around meal times and times parents bring and drop off children, therefore we may not be able to spend more time on a trip to allow for the bus.

Thank you for your time,

Michelle Grillot  
Latchkey Director  
Enterprise Elementary

Dear Wichita City Council,

As a City employee and transit customer, I have many concerns regarding the proposal to cut some of the transit routes and half hour services during peak hours which will cost a number of employees their jobs. I ask that you put yourself in their shoes as well as NUMEROUS passengers who depend on those services to get to work, medical appointments, etc. As a person who has been utilizing transit services over the past NINE years, I have witnessed firsthand many of the passengers do not or cannot drive due to legal issues, medical conditions that prohibit them from operating a motor vehicle or they simply cannot afford to purchase a vehicle. Also, many passengers do not have family or close friends to help them out with transportation. Please also consider the fact those who earn minimum wage salaries cannot afford cab fare as they sometimes can barely piece together bus fare. These are people who are productive citizens that earn an honest living. There are many citizens who are forced to turn down employment to due to lack of bus services for those who would be required to work 2nd or 3rd shift. Carpooling is not always an option for many.

It is important to consider what would or could happen in our city as a result of the proposed cuts. Ask yourselves, is this really fair to everyone? How is this this going to impact our city? If these cuts are truly necessary, I propose that Transit management look over personnel files and determine which drivers have disciplinary issues as well as excessive absences and determine who should be let go instead of punishing the newer drivers some of which came from other departments that had to make cuts. I know that many departments think cutting out overtime is an answer to the budget, but if morale is low who wants to come to work???? There will always be a need for overtime. People get sick, vacations as well as there are unforeseen circumstances.

I appreciate your time and pray that you will make the best decision that will heavily impact the citizens as well as our Transit employees in the City of Wichita.

Respectfully,  
Anonymous

## Showalter, Talbert

---

**From:** Janet [jvpape@cox.net]  
**Sent:** Monday, April 30, 2012 12:06 PM  
**To:** Showalter, Talbert  
**Subject:** FW: Bus Service

Hope this gets to you;thanks

---

**From:** Janet [mailto:jvpape@cox.net]  
**Sent:** Monday, April 30, 2012 11:52 AM  
**To:** 'tschowalter@wichita.gov'  
**Subject:** Bus Service

I would like to express my concern related to the City bus system and recent proposals to reduce/modify service. This has been an ongoing issue for this community for many years and it is really time that this community and its leaders find the political will to improve and enhance this service for the well being of this community. In my former capacity as Exec. Dir. of Catholic Charities, I served on a task force and went to many a meeting regarding the impact of the system's inadequacies on the disabled and those struggling to work and make a living without personal transportation. Many consultants have also weighed in...this problem can be solved and will take a commitment to do whatever it takes to stabilize and grow this service so citizens can both get jobs and maintain them. Transportation is a vital TOOL in enabling the self sufficiency we all talk about. That having been said,I hope our leaders will be willing to re-prioritize and do whatever it takes to find the dollars necessary. This community will not continue to progress without such a commitment. Adequate transportation is a vital,vital service. I,for one,am willing to do my part in seeing that this happens even if that means an increase in sales tax,which I know has been talked about or possibly needing to support another undesirable alternative. What can't be compormised is a transportation system that will truly meet the needs of citizens and facilitate their independence. This is long overdue and must be an integral part of our Wichita community plan.

Thank you for the opportunity to comment,

Janet Valente Pape,former director of Catholic Charities

## Showalter, Talbert

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**From:** Mardell Byrd [mb7730@swbell.net]  
**Sent:** Monday, April 30, 2012 9:48 AM  
**To:** Showalter, Talbert  
**Subject:** Bus transportation

Mr. Showalter,

I'm writing to express my concerns about the changes in the bus schedule plus stopping some bus routes all together.

- I have a special needs son who uses the bus on a daily bases for work. He is trying to get a job in the community and if the west connector is discontinued that we stop any chance of him on the NW side of town.
- This will also affect people that already use the bus to get to NW side of town just to get home.
- Having the buses run every hour will make people stand outside for a long period of time.

I don't understand why we can't run the buses like other smaller towns that have better service then we do. I'm not sure what it will take but I'm will to support almost anything to keep the bus running and increasing the routes to keep people employed and have the ability to have independence to go where ever they need to in town.

Thank you,

Showalter, Talbert

---

From: Gale Shaw [GShaw@ketch.org]  
Sent: Thursday, April 26, 2012 1:27 PM  
To: Showalter, Talbert  
Subject: FW: Wichita Transit proposed changes

My name is Gale and I am a Case Manager for adults with Intellectual Disabilities transitioning from working in a sheltered workshop and living in a group home to living and working in the community. The proposed changes to the Wichita Transit bus routes will have a huge impact on the population that we serve that are employed in the community. Public transportation is the only means of transportation for these individuals to get to and from work. Eliminating the Westside Connector will cause many to lose their jobs.

Wichita continues to grow so our transportation needs are greater but instead of expanding services, they are being decreased or eliminated. Individuals that use public transportation should have the same opportunities for employment as those that are able to drive. At this time, the Westside Connector gives them opportunity to find employment throughout the Westside. If this route is eliminated, many individuals will lose their jobs, which will cause a snowball effect. They will not be able to pay their bills, which will in turn cause them to lose their homes, and then will have to rely more on public services in our community.

Several agencies work cooperatively to provide services to the Intellectually Disabled to assist this population with becoming productive members of our community. By reducing or eliminating public transportation services this population becomes more dependent on our community. We are working to integrate them into our community and this causes more segregation. This does not exclude those without disabilities that have to rely on public transportation. An example of this is eliminating the bus service to Goodwill.

It seems that there are other programs in Wichita that get a bulk of the money allocated to them. The budget should spread the money more evenly over programs in the community and not favor one over another. I would appreciate if you would reconsider decreasing or eliminating services. Please place yourself in the shoes of individuals that rely on public transportation. Would you have a job if you had to rely on the city bus and then your route was eliminated?

I will be attending the meeting on Monday night and look forward to meeting you. I have attended public meetings in the past and no one was introduced. I hope that in this meeting all that are listening to the public's concerns will introduce themselves, so we know who we are talking to. This would really be helpful to me as I am visually impaired. I have been told that the City Council members do not want to be introduced as they feel they will be targeted.

Thanks for your consideration in this matter.

Sincerely,

***Gale Skaw***  
***Targeted Case Manager***

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This e-mail and any attachments may contain confidential information subject to protection under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule. If your business is a "covered entity" under

HIPAA regulations, you are obligated to treat such information in a manner consistent with the HIPAA Privacy Rule. If this e-mail was sent to you in error, you are prohibited from using or disclosing this e-mail or any attachments. Please immediately delete it from your computer and any server or other locations where it may be stored and e-mail [mbounous@ketch.org](mailto:mbounous@ketch.org) or call Melyn Bounous, KETCH Privacy Officer at 316-383-8700 advising that you have done so. Your cooperation is greatly appreciated.

## Showalter, Talbert

---

**From:** Pamela McGinnis [pammac7@yahoo.com]  
**Sent:** Thursday, April 26, 2012 10:10 AM  
**To:** Showalter, Talbert  
**Cc:** pammac7@yahoo.com  
**Subject:** Transportation

Mr. Showalter:

I am writing this email to express my concerns regarding the changes in transportation for the disabled. Why would a city even think about taking this valuable resource from the people who need it the most? The disabled want more than anything to be independent and one of the ways this can happen for them is to have access to transportation. Many of the disabled live in independent housing and they do not have family members who either can or will take them places they need to go so they rely heavily on the Wichita Transit System to be able to go to work or to other places they need to go. I hope that this will definitely be reconsidered and the disabled will receive the services they deserve and need.

Thank you for your consideration.

Pam McGinnis



## Showalter, Talbert

---

**From:** rpatbirdy@aol.com  
**Sent:** Wednesday, April 25, 2012 4:31 PM  
**To:** Showalter, Talbert  
**Subject:** Bus Routes

Please don't change the bus routes as it has been suggested. My daughter is handicapped and would have no way to get to KETCH if she can't ride the bus. There must be some other way to save money. It was hard when the bus prices went up, but we could understand that.

Thank you,

Mrs. Jerome Ridder  
9719 W. Kenny  
Wichita, Ks. 67212

## Showalter, Talbert

---

**From:** Sharon Barber [motherbarber@yahoo.com]  
**Sent:** Wednesday, April 25, 2012 1:13 PM  
**To:** Showalter, Talbert  
**Subject:** Bus Transportation

I hope this will be given lots of consideration for the disabled. They need all the support they can receive. They need and want to be independent but without transportation it will be harder and we are concerned that some will give up if this service is taken away from them. Wichita city transportation for the disabled is very, very important. Thank you for giving more consideration on this important matter.

*Have a great day!*

*Sharon*

*Sharon Barber*  
[motherbarber@yahoo.com](mailto:motherbarber@yahoo.com)

## Stroot, Michelle

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**From:** moonbeam2 [moonbeam2@cox.net]  
**Sent:** Tuesday, May 01, 2012 12:57 PM  
**To:** Stroot, Michelle  
**Subject:** Re: Residents tell Wichita officials: Make changes, but don't cut vital bus service

I think that the city could get more revenue by enforcing parking laws. This additional revenue could be used to offset the budget shortfall of the transit system. I live near West High School and people park in no parking areas constantly at the beginning of the school day, at the end of the school day, and during the evening hours when events are happening at the school. . I don't know how much a parking ticket is, but when you are talking about 30 to 50 cars per day that park in no parking areas, I think that would amount to quite a help for the transit system. It would also mean that the high school kids would be safer as they are constantly walking between the parked buses on one side of the street and the illegally parked cars on the other side of the street. I have lived in this area since 2001 and have never seen a parking ticket issued. Even the police car of the policeman who works at West High School consistently parks under the no parking signs. Why not enforce our laws and save our transit system.

Sincerely,

Vicki Leslie

**Stroot, Michelle**

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**From:** chrystal young [chrystl\_young@yahoo.com]  
**Sent:** Tuesday, May 01, 2012 7:52 AM  
**To:** Stroot, Michelle  
**Subject:** Wichita Transit

The transit is my way to work everyday. Yes I do have a drivers license, but havent had a car for 2 years. The 45 bus is very convient for me to go to and from work. If taken away then that would cause me to wait 45 minutes in the heat and the cold. If the 45 buses are taken away I am looking at moving to a City where they have excellent bus service and dependable service to get me to and from work. I am not mentally handicapped and I pay full fair to use the transit. For the last two years I have been an advacate for the transit. Thinking it is cheaper than using a car. Right now I dont know what to think of the City of Wichita.

When the city looks at bringing new business to town. Help the people who really want to work and give a good days work get to work. By cutting the 45 buses could affect Bombardier and other employers who work around the Airport.

Please think thru all the options to help this CItY grow and be the City it could be and the Transit be all it can be

Thank You

Chrystal Young

**Stroot, Michelle**

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**From:** L Shoup [jadenpanther@yahoo.com]  
**Sent:** Wednesday, April 25, 2012 10:06 AM  
**To:** Stroot, Michelle  
**Subject:** Re: Wichita Transit Service

Dear Michelle,

My husband Reed Baker will be working at another Goodwill. But he might have to have training there and the bus service would be the only way out there. As we don't have a car. Also we have the CUMTD here and they had dropped the rates to \$60 a year maybe if the bus service did something similar maybe not as cheap and extended the hours alot more people would ride. It makes sense when gas is lower than a ride on the bus, to just get a car instead of riding the bus. Just a suggestion.

Warmest Regards,  
Leah Shoup

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**From:** "Stroot, Michelle" <MStroot@wichita.gov>  
**To:** "jadenpanther@yahoo.com" <jadenpanther@yahoo.com>  
**Sent:** Tuesday, April 24, 2012 3:57 PM  
**Subject:** Wichita Transit Service

Hi Leah,

I received your phone message today. You can e-mail me your comments and I will include them with our minutes from the meeting.

Our staff is looking into ways to continue some sort of service to Goodwill. Which Goodwill will your husband be working at? The one we are specifically talking about is at 37<sup>th</sup> and Oliver.

Thanks,  
Michelle

**Michelle Stroot**

Planning Analyst  
Wichita Transit  
316-352-4808

## Stroot, Michelle

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**From:** daveway3.1@juno.com  
**Sent:** Sunday, April 29, 2012 7:48 PM  
**To:** WichitaTransit  
**Subject:** Proposed bus service changes

I have been riding the bus downtown to my job for five years. I strongly object to the proposal to diminish the transit service even further. I can't believe it's even a consideration in a city this size to take the bus service from mediocre to bad.

The City of Wichita is at fault for the lack of riders. From what I can tell, there is no type of promotion or innovate thinking being used to gain ridership. For example, the most obvious groups to target are people who work downtown. It's easier to get downtown because most of the buses end up there. Why not work with some area colleges and arrange for some marketing students to do unpaid internships with the transit department in exchange for credit hours? The students could contact downtown offices and even give talks to employees on how to use the bus service – show them where to catch the bus or where to park and ride if they do not live near a bus route. The students could also work with the downtown development group, Chamber of Commerce, radio and TV stations to promote the bus service. Perhaps a local ad agency would donate their time to design a campaign for the transit system.

The transit service should coordinate with the River Festival organization to encourage people to take the bus downtown during the event. Some park and ride locations could be set up at area shopping centers and bus information could be included in the River Festival brochures. The Wichita Eagle could help promote bus service to downtown for the festival.

There could be a campaign encouraging people to ditch their car and take the bus one day a week. I started out thinking I would take the bus one day a week to save gas and now I ride the bus almost every work day. It's much more pleasant to relax, read the newspaper and work the crossword puzzle than to stress out over crazy drivers on the streets.

The downtown transit center is a filthy mess. There's trash everywhere and large planters with no flowers that are filled with cigarette butts. If there aren't any funds to clean up the place, get some inmates from the Sedgwick County jail or men from the nearby work release center to do some of the work. The busses are clean for the most part, but the bus drivers could do more to clean up trash during the day. The bus drivers should receive instruction on how to greet passengers in a friendly manner instead of ignoring people who board the bus. It doesn't cost a penny to say hello or thank you. Most of the bus drivers are friendly, but there are a few who could use some lessons in common courtesy.

The City of Wichita should subsidize public transportation until it can increase the ridership to break even. It is a vital service that many rely on. The City of Wichita has plenty of money to hire consultants and give incentives to businesses. Instead use some of the resources to keep the busses running at the current level of service for now.

A summary of my recommendations are:

1. Promote the bus service
2. Clean up the transit center and be courteous to passengers
3. Subsidize the bus service

Thank you.

Jeannie Wayne  
1952 S. 123<sup>rd</sup> St. E.  
Wichita, KS 67207  
Daytime Phone: 687-3444

## Stroot, Michelle

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**From:** Lorenzo Peeples [lpeeples2@cox.net]  
**Sent:** Thursday, April 19, 2012 3:13 AM  
**To:** WichitaTransit  
**Subject:** meeting april 30 2012:

Question, Why do we want to stop the services that take people to Good Will, when they rely on the service? We as people depend on the service to get to and from home and work. We also use the services to go to the stores and other places for relaxation and to return home. Also, We understand that the cost of fuel has increased but to stop services will cause people to not be able to work plus some of your drivers will have no job as well. I would propose this idea if at all possible; to start down sizing the fleet of buses to a smaller size and close wait time from 30 to 40 minute waits to 10 to 15 minute wait time at stops along the routes. Plus stop this down town line up because that is too much of a rush for drivers and people to get any place that they are going. I would propose that those buses that are making the connection going to the transit center downtown would just make their drops on a 30 to 45 minute drop in-bound and out-bound. That would cut down on rush time to meet buses that are at the station and those buses at the station could leave and return within 30 to 45 minute intervals. This would keep a flow of the services moving without a rush. Also, I would propose that all drivers that are working with customers or riders would have better communication skills to talk with the customers/riders because all of us need each other. The company needs people and the people need the service. So, I thank you for the service that we have. Thank you for listening. Your Servant in the Lord: Minister L. Peeples.



**Stroot, Michelle**

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**From:** Chris Gallart [cjgall66@gmail.com]  
**Sent:** Tuesday, March 27, 2012 7:54 PM  
**To:** WichitaTransit  
**Subject:** non-traditional transit

Why not apply swarm theory to the transit system. Citizens could use their own vehicles equipped with gps to pick up the slack in peak hours and allow citizens in outlying areas access to public transit. This could be a compliment or replacement for the traditional public system. Instead of the unlimited ride concept why not a charge by the mile system used to compensate the driver and bill the rider. Increased flexibility with time savings while cutting overhead seems almost too good to be true. Standards would have to be established for car and driver safety and reliability. A text msging number would serve as call in for pickup. Riders would have there location information transmitted to a handheld or an on board unit with the driver. With swarm theory adjusting resources to account for rises and falls in ridership the drivers time would be valued as well as the riders.

## Stroot, Michelle

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**From:** Flener, Janet L [janet.l.flener@spiritaero.com]  
**Sent:** Tuesday, March 27, 2012 3:26 PM  
**To:** Wichita Transit  
**Subject:** Service to Spirit/Boeing

Have you thought of or conducted a study of the feasibility of a bus route to Boeing/Spirit? With more people living downtown and others wanting to save money on gas for their vehicles, it may be a viable option again. I rode the bus to work in the mid-80s and it worked well.

*Janet Flener*

*523-4602*

*787 A&I*

[janet.l.flener@spiritaero.com](mailto:janet.l.flener@spiritaero.com)

*Life may not be the party we hoped for, but while we are here we might as well dance*

## Stroot, Michelle

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**From:** Marks [marksrage.allen@gmail.com]  
**Sent:** Monday, March 19, 2012 9:15 PM  
**To:** WichitaTransit  
**Subject:** Air Capital with Air Transit

Hello again Wichita Transit

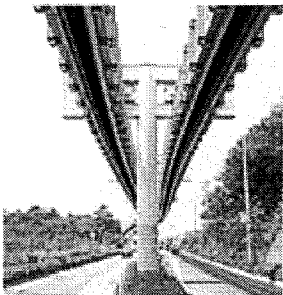
I can't be the only one consider this but here it is.

Riders will smile every time going over stopped traffic at stop lights. This doesn't use gasoline or diesel fuel. It won't tear up the streets. It offers a better waiting area than a bus. No matter the expansion ideals many people in Wichita will not ride the bus even with gas prices higher.

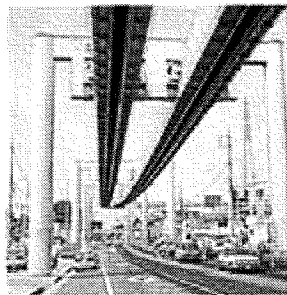
I'm not saying the City should build this, but incentives for Business to design and construct this system here should be available. A lot of the supports will be on city owned land. Waiting stations above intersections. It doesn't have to be two lines everywhere. Two sets of rail cars could be using one track. A upside L support on one side of the road. This can go into neighborhoods, connect to downtown and to the airport. We give up some air views over the roads with the track and supports.

This is ancient technology too. It could be manufactured here.

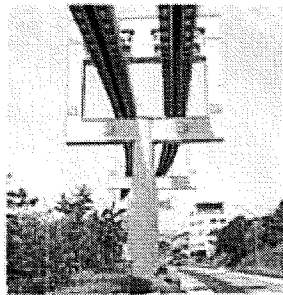
T type column



Gate type column



Racket type column



Train entering station

[http://www.youtube.com/watch?v=RsERzqI9F\\_U&feature=related](http://www.youtube.com/watch?v=RsERzqI9F_U&feature=related)

Riding on the Train. It has a driver. Wichita Transit could be a adventure for citizens and tourists? At night this be a wonderful view over some boring streets. It's safe in the world, cold and windy places. Earthquake areas have this. Tight roads and crowded neighborhoods with it. Wichita has wide enough interections for this.

<http://www.youtube.com/watch?v=dgkrnpDkAEg&feature=related>

To Transit in this city without gasoline, diesel, bus or car! The Air Capital with Air Transit

Marks Allen  
Wichita, 67212

## Stroot, Michelle

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**From:** Marks [marksrage.allen@gmail.com]  
**Sent:** Sunday, March 18, 2012 6:53 AM  
**To:** WichitaTransit  
**Subject:** Lets invest in ourselves

Wichita Transit,

Hello!



That is a Dutch company Bus called Phileas BRT. A future looking bus in Wichita could promote ridership. I like this style because the doors open behind the driver area. That's safer for drivers. I'm sure someone has seen this before downtown, I easily found it with Google. It can be electric and possibly fully automated.

I'm a vocal advocate for the return of Passenger Rail to Wichita. Some have been working for years with legislators and KDOT to do enviromental studies for regional trains. My vocals keep mentioning High Speed Rail planning. The vocal chords have strained louder since Boeing is gone from Kansas. Aviation jobs reduced never to return. Business jet market will be harmed by manipulated jet fuel prices. We can manufacture High Speed Trains in Wichita and be the connector for passenger rail systems between Oklahoma City and Kansas City. 5 states together can afford High Speed Rail. Illinois, Missouri, Kansas, Oklahoma and Texas. City governments have to business partner. High Speed Rail can be in the next city in an hour. 150 mph trains. Two sets of High Speed Rail tracks. One set of passenger rail for Amtrak.

Oklahoma City has already planned it out, they expect future trains to come from Wichita.

In Boeing Warehouses lets offer different High Speed Rail companies the space. Bombadier will bring theirs to Wichita too. Japanese, Italian and French builders of High Speed Trains or we create our own. Everything is here to create High Speed Trains. We are in the right location in a region of larger cities to connect with High Speed Trains. They have gone through mountains and underwatwer with trains, we have the flat prarie so much simpler and cheaper Billions to build.

Any discussion of sales tax to pay for transit, it must include planning for future High Speed Rail. We can save money same as paying for Intrust Arena, what do we get out it? A Regional Train Station downtown connected. A place for the Bus system finally to discharge riders going to another destination. Optimism that we become a Transit City with Aviation. What can we be known for, using big city mass transit here. This small city in comparison to others has straight roads to do it. Straight routes and possibly straight Monorail with an electric bus!

It can't be a huge plan all at once, we are only discussing the bus now. But we have to decide or vote will be the decider in November, to engage passenger rail discussion and truly fix the bus system in Wichita so it's an alternative to driving to more people. A future looking bus, better bus stops that are informative. Trains some day in our future that could be hundreds of miles away in a hour, on time. All the Development Plans for Wichita require a Regional ideal. Passenger trains is the right idea. Casino could pay for Amtrak from Union Station to stop in Mulvane.

We have to be known in Wichita by our transit. This is the future of Wichita, not to keep expanding roads and being harmed by manipulated fuel prices. We have to figure out smart and properly planned mass transit that is exciting and a joy to ride. Some say High Speed Rail and all the different infrastructure ideas in Japan took 30 years. We have to begin 30 year transit developments now.

Mitt Romney said he would cut Amtrak subsidy so choose your Presidential choice properly. He doesn't believe in mass transit because his wife drives "a couple of cadillacs". He boasts "I made a lot of money" while using offshore banking with low tax rate. He would approve the Keystone Pipeline immediately.

The national news will proclaim Wichita that has lost thousands of aircraft jobs is going to discuss High Speed Trains. Everyone will nod their head, of course. What else can we manufacture here instead? High Speed Train from Wichita could go to Liberal some day. People in Colorado and that part of Oklahoma, western Kansans would use that station. It would be a fast train from Liberal to Amarillo Texas. Some future day High Speed Train will go from Oklahoma City to Albuquerque and will stop there. There will be a High Speed Train from Kansas City to Denver with a stop in Kansas. Upstate Kansans would have access high speed trains that could take them to airports in Denver or Kansas City faster and safer than driving cars. A lot of Kansas some future day will have access to High Speed Trains.

Highway Bills that cost Billions of dollars expanding roads, expansion of maintaining roads costs, increasing cars and more traffic 30 years from now. We have to create mass transit now.

Marks Allen  
Wichita, 67212

Stroot, Michelle

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From: bluedeviegirl@aol.com  
Sent: Thursday, February 23, 2012 1:43 AM  
To: WichitaTransit  
Subject: transit open house

hello my name is stefanie. i ride transit everyday on a special citizens card due to being blind. i like the bus to run longer hours and even on sundays so us that do not drive can get around town when we need to and not use a cab all the time. even with gas prices going up everyday the buses would see more riders that would ride the bus 24 7 and most want that to happen now. thank you stefanie

**Stroot, Michelle**

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**From:** CountryBblby@aol.com  
**Sent:** Thursday, March 15, 2012 2:44 PM  
**To:** WichitaTransit  
**Subject:** (no subject)

we want the buses run late on the weekday & weekends to of we go to bingo & church on sundays





**Kueser, Denise**

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**From:** tom phillips [tphillips\_58@cox.net]  
**Sent:** Tuesday, May 01, 2012 12:13 PM  
**To:** Kueser, Denise  
**Subject:** Fw: public hearing *April 30*

**From:** tom phillips  
**Sent:** Tuesday, May 01, 2012 12:11 PM  
**To:** [msstroot@wichita.gov](mailto:msstroot@wichita.gov)  
**Subject:** Fw: public hearing

**From:** tom phillips  
**Sent:** Sunday, April 29, 2012 5:37 AM  
**To:** [lcdakfillups@sbcglobal.net](mailto:lcdakfillups@sbcglobal.net)  
**Subject:** public hearing

I have rode the Wichita transit buses for 10 years. It is not only my primary source of transportation, it is my only transportation. I have rode the west side connector that entire 10 years to work. You are proposing to do away with my only source of transportation to work so I can survive and pay taxes but most importantly have my health insurance to buy my prescriptions. Unless you put Mid Continent Airport on the Maple route, my options are to walk or ride a bike. I cannot afford 10 dollars one way for a cab. I have some serious health issues and I'm not sure I can safely walk or ride a bike. I had a fatal heart attack in February and coded on the table. My cardiologist did 7 minutes of CPR to save me. At one point I was dead for 2 minutes with NO heartbeat. He shocked me with paddles 5 times to revive me. They put in 3 stints but I still have major blockage in the other side. It is 3 miles from my apartment to the airport and I'm not sure my heart is up to 6 miles of walking or biking each day. Not to even mention what am I going to do in extreme weather conditions.

The ridership has declined the 10 years I have rode the buses. You have done nothing to improve the route system to attract riders who have cars in their driveways. A guy who owns a car would not ride to work if it takes him 2 hours to get across town. For 10 years in these very meetings I have heard the suggestion to use a grid system to save fuel. You have not listened and now your business is not only suffering it is threatened. How can you not serve an entire section of the city? How are the good taxpayers going to get to work who work at 21st and Maize. How am I going to get to work? How can the "Public Transportation System" NOT serve the airport in their city?

I have 3 proposals to solve this problem. 1. Go modern and put the buses on a grid system instead of an out of date hub system. This would not only save fuel it would attract new riders. Permanent solution to many of your problems. 2. Put another band aid on a severed artery and extend the maple route to cover the airport and at least go out to maize road. 3rd and best proposal: stop using the terms "Wichita Transit" and "Public Transportation" in the same sentence. It makes me want to vomit. You do not serve the public and never have. Thank you.

## Kueser, Denise

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**From:** tom phillips [tphillips\_58@cox.net]  
**Sent:** Tuesday, May 01, 2012 1:19 PM  
**To:** Kueser, Denise  
**Subject:** Fw: hearing April 30

**From:** tom phillips  
**Sent:** Tuesday, May 01, 2012 1:07 PM  
**To:** [msstroot@wichita.gov](mailto:msstroot@wichita.gov)  
**Subject:** hearing

My name is Tom Phillips and I have some comments about the hearing last night. Meaning no intended disrespect to Mr Vinson, How can he say these changes might cause some minor inconveniences to a few riders.? Minor inconveniences ? Why don't you take away Mr. Vinsons car and tell him he has to walk or ride a bike and ask him if it's a minor inconvenience ? Does he think the 52 people who ride the connector are just out for a joyride on the bus? These people are going to work. He sets through the meeting with the attitude like he doesn't really want to be here. I would say 52 people are more than a few. He downplays this for the Media like its no big deal. And the way he says "unfortunately we have a budget and blah blah blah" it makes it sound like it is set in stone and the decisions are already final. And what about the Mayor? He does a news Video before the meeting about we are here to listen we will always listen blah blah blah and then He leaves before the meeting starts! That's about as deceptive as Mr. Vinson implying minor inconvenience to a FEW riders. And Low revenue on the connector? you have not turned down any of my dollars for the last ten years. How can you plan to build a new fancy airport but we have no public transportation to take you there. Oh just take a shirtless cab driver there who cusses this blankity blank &\*^(\$#) city all the way. By the way I have taken a cab home on days I didn't feel well and the cabbies that are at the airport are WORSE than you think. If your not going to salina or ok city they cuss and drive like idiots. I had one call me a "cheap son of a blank" because I was only going to central and ridge. I want you all to watch for my picture in the obituaries and when they find me dead on a bicycle on the side of the road I want you to know that you killed me. I wish in some respects I had not even went to the meeting. I did not even KNOW they had wifi on the busses. what a giant waste of money. 94% of the people on that bus are probably going to work. If they can't afford a car they probably don't have a laptop either. PLEASE try to find an alternative solution to doing away with the connector. Thank you, Tom Phillips

## Kueser, Denise

---

**From:** tom phillips [tphillips\_58@cox.net]  
**Sent:** Tuesday, May 01, 2012 1:32 PM  
**To:** Kueser, Denise  
**Subject:** Fw: hearing *April 30*

**From:** tom phillips  
**Sent:** Tuesday, May 01, 2012 1:07 PM  
**To:** [msstroot@wichita.gov](mailto:msstroot@wichita.gov)  
**Subject:** hearing

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From: John Kelly [JKelly@buchanan.com]  
Sent: Tuesday, May 01, 2012 4:30 PM  
To: Stroot, Michelle  
Cc: Kueser, Denise  
Subject: Proposed Wichita Transit Cuts

To whom it may concern:

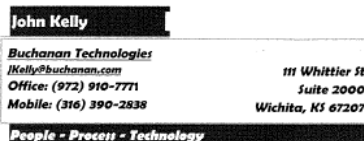
My name is John Kelly and I currently catch the 5:45a Maple bus at Maple and Tyler every weekday morning as it goes by that corner around 6:12a. I also work on the East side of town and so catch the College Hill connection at the Transit center to be at my job by 7:30a; I have to wake up by 5:15a every weekday morning, 2 hours before I even get to my job, to do all of this. In addition, I am at work 9 hours meaning that I catch the 4:15p College hill bus as it comes by Towne East Mall Drive and Douglas Ave at about 4:42p. Therefore I spend approximately an hour of a morning and an hour of an evening physically on the buses plus waiting times; I leave my home at 6a and I walk in the door at 6p... a total of twelve hours a day; 3 of which are spent walking to, waiting on or physically on a bus.

I have perused all information regarding the cause and effect that has led to the proposal to cut peak hour services, however I disagree that this is a valid solution for several reasons:

- 1) People like myself who rely on an off-schedule bus such as a :45 bus will be forced to catch a bus that comes by 30 minutes earlier, which in turn:
  - a. Will deprive us of even more sleep to get to our jobs on time, which is not fair to us – after all it is not our fault that the city has made poor decisions that have cut the revenue collected off of the buses, such as the drop in ridership caused by the \$0.50 hike last year and possible mismanagement of Federal and State Funds earmarked for transit services.
  - b. Additionally, some jobs have very strict rules about how soon before your scheduled shift you can arrive; most only allow 10 – 15 minutes, to avoid loiterers, and people get written up for habitually breaking this time frame meaning that those people will have to wait elsewhere, most likely outside in the weather to avoid punishment and termination over this.
  - c. In a like vein, those who use a :45 bus to get home right now after work, will have to wait somewhere for the next :15 bus to come by and not all waiting places are covered or have any shelter from the elements. And as a person who has had to wait in all kinds of weather (i.e. pouring rain, snow, ice, gale force winds, etc.) for a next bus because my usual bus never showed at the scheduled time, I can say this is not very pleasant.
- 2) Another point to consider is this:
  - a. It has been stated that a simple \$0.50 hike in fares caused such a revenue drop that now the only solution is to use the fuel money from every :45 bus as well as the Goodwill and Westside Connector buses indefinitely to make up the current deficit.
  - b. If the \$0.50 hike was calculated at the current ridership at the time it was imposed to make up whatever shortfall was present at that time but backfired causing the current shortfall that can only be solved by stopping over a dozen buses from running then what are you all going to do when/if the stopping of the :45 buses, the Westside Connector and the Goodwill bus causes even more people to stop using the transit system creating an even bigger deficit? Stop all the buses? Or reduce the service day by several hours? Raise fares to \$10 a ride and make transfers \$2 each?

Have you even addressed this particular outcome? If not you should, because I have no intention of being at the mercy of the City of Wichita to stay employed and I doubt anyone who has other means will either. The **only** reason I am currently on the buses is because at the time I started riding 5 years ago it was a cheaper option than gas, oil and maintenance costs on a privately owned vehicle and was nearly as convenient; however that has been rapidly changing and have no issue getting off the buses if it means that I don't have to spend 3 to 4 hours a day just to get to and from work plus pay extra for the privilege.

Sincerely,



## Kueser, Denise

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**From:** Marks [marksrage.allen@gmail.com]  
**Sent:** Tuesday, May 01, 2012 4:50 PM  
**To:** Stroot, Michelle; Kueser, Denise  
**Subject:** Vote in November, Expanded Rapid Bus System

Let's Vote for expanding the Bus System so it's modern and useful for the "growing" City. Let's the vote say "Do you support Expanded Transit?" Choose a rapid bus ( I think a bus every hour is fast enough ) system and promote them. Citizens will choose what to use. We have to grow Mass Transit in Wichita by providing an alternative to drivers. Roll the plan out in different sections of the city. We need the modern bus waiting area center of streets with a dedicated lane for the Bus so it never blocks drivers while picking up passengers. Drivers should never get a negative opinion of the bus riders because the way the bare bones Transit system is operating now.

Promote a Vote for November. Citizens Choose Mass Transit plans.

I'm a promotor of Mass Transit, it's very important while our city is losing Aviation jobs. I hate sprawl and not having a bus system encourages it.

Let's Vote and stop allowing this negative publicity of the Bus system to continue. People should have not have their bus route taken away because there is not politician promoting Transit and being responsible for it. Let the citizens vote for Mass Transit then you have the power to grow the system.

Marks Allen  
Wichita, 67212

City of Wichita  
City Council Meeting  
May 15, 2012

**TO:** Mayor and City Council

**SUBJECT:** Community Events - 2012 Wichita River Festival. (Districts I, III, IV and VI)

**INITIATED BY:** Division of Arts & Cultural Services

**AGENDA:** New Business

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**Recommendation:** Approve the licensing report, street closures and request for permit for the 2012 Wichita River Festival, as per the Memorandum of Understanding (MOU) between the City of Wichita (CITY) and Wichita Festivals, Inc., (WFI).

**Background:** Since 1972, Wichita Festivals, Inc. has been coordinating and producing a multi-day community celebration attracting local residents and tourists from the state of Kansas and surrounding states. The City entered into a two year MOU with Wichita Festivals, Inc. on December 14, 2010 which outlines the expectations for the sponsorship of the festival by the City of Wichita. In-kind services, permits, licenses, street closures and security provided by the Wichita Police Department are clearly outlined in the MOU to ensure the requirements and conditions of the Special Event Ordinance are followed.

**Analysis:** Wichita Festival, Inc. is coordinating with City of Wichita departments for licensing and street closure requests. Approval of such permit will be in lieu of issuance of individual permits and authorizations identified as necessary.

**Financial Consideration:** City sponsorship of \$40,000 will be taken from the Convention and Tourism fund. The City also agrees to meet the commitment of \$50,000 for in-kind services to WFI which is at a level similar to the previous year.

**Goal Impact:** Enhance the Quality of Life for citizens through special events and activities.

**Legal Consideration:** The Law department has reviewed and approved the certificate of insurance as to form.

**Recommendation/Actions:** It is recommended that the City Council approve the request for permit for Wichita Festivals, Inc. 2012 River Festival taking place June 1 - 9, 2012.

**Attachments:** River Festival Licensing and Street Closure Request.



CITY LICENSE  
(316) 268-4553

## RIVER FESTIVAL LICENSE APPLICATION

Fee: Waived  
Complete in Duplicate

### Applicant Information

Name		Phone	
Address		Zip Code	

### Business Information

Name		Phone	
Address		Zip Code	

The Wichita River Festival will begin \_\_\_\_\_ and end \_\_\_\_\_.

Wichita Festivals, Inc., has obtained and submitted to the City Clerk of the City of Wichita insurance in the amount of \$\_\_\_\_\_ which shall continue in effect at all times during which the Wichita River Festival is being held, and naming the City of Wichita and the Board of Park Commissioners as co-insureds.

I hereby certify that I am authorized by Wichita Festivals, Inc., to make application for a City of Wichita River Festival Permit and that Wichita Festivals, Inc., will abide by all rules and regulations as set out and defined in Ordinance No 39-119 (Chapter 3.14) of the Code of the City of Wichita, Kansas.

\_\_\_\_\_  
Signature of Applicant

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

My appointment expires on \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

### FOR OFFICIAL USE ONLY

See attached for regulatory approvals/disapprovals

	APPROVED	DISAPPROVED	DATE
Law Dept (Insurance)			
City Manager			
License Number		Clerk	
Date Received		Date Released	

## **Wichita Riverfestival 2012 Street Closings**

### **Westar Energy Food Court**

**May 30, 2012 7:00 am through June 13, 2012 5:30 am**

Douglas Avenue, Water Street to Waco Avenue

### **West Bank Stage**

**May 31, 2012 6:00 pm through June 3, 2012 11:59 pm**

McLean Boulevard, Douglas Avenue to First/Second Street

Sycamore Street, Douglas Avenue to First/Second Street

### **Capital Federal Fireworks**

**June 1, 2012 and June 9, 2012 6:00 pm – 11:00 pm**

Douglas Avenue, Waco Street to Sycamore Street

McLean Boulevard, Douglas Avenue to Maple Street

First Street/Second Street, Waco Street to McLean Boulevard

### **Specs Criterium Bike Race**

**June 3, 2012 7:00 am – 5:00 pm**

First Street, McLean Boulevard to Water Street

Water Street, First Street to Third Street

Third Street, Main Street to Waco Street

Waco Street, First Street to Central Avenue

Central Avenue, Waco Street to Greenway Boulevard

Greenway Boulevard, Central Avenue to Riverview Boulevard

Second Street, Riverview Boulevard to Main Street

### **Highland Dairy Ice Cream Social**

**June 6, 2012 3:30 pm – 11:59 pm**

Douglas Street, Waco Street to McLean Boulevard

### **Douglas Avenue Stage, Block Party and Second Weekend Concerts**

**June 7, 2012 at 7:00 pm through June 10, 2012 12:00 pm**

Douglas Avenue, Main Street to McLean Boulevard

Century II Drive, Williams Street to Douglas Avenue

Water Street, Douglas Avenue to Waco Street

Waco Street, Douglas Avenue to First Street

Wichita Street at Douglas Avenue

Civic Center Drive at Douglas Avenue

### **River Vault**

**June 9, 2012 6:00 am - 11:59 pm**

McLean Boulevard, Douglas Avenue to Lewis Street

### **Riverfest Cruise In**

**June 9, 2012 8:00 am - 10:00 pm**

Water Street, Dewey Street to Waterman Street

### **Riverfest Poker Run**

**June 9, 2012 8:00 am - 10:30 pm**

Water Street, Douglas Avenue to First Street



**Kansas Health Foundation River Run Street Closings**  
**Saturday, June 2, 2012 4:00 am – 11:00 am**

Lewis Street, McLean Boulevard to Waterman Street  
Waterman Street, Lewis Street to Washington Avenue  
Wichita Street, Dewey Street to Lewis Street  
Water Street, Waterman Street to Main Street  
Main Street, Lewis Street to English Street  
Market Street, Lewis Street to Douglas Avenue  
Broadway Avenue, Lewis Street to First Street  
Topeka Street, Lewis Street to First Street  
Emporia Street, Lewis Street to Douglas Avenue  
St. Francis Street, Waterman Street to Mead Street  
Commerce Street, Waterman Street to Mead Street  
Mead Street, Waterman Street to Douglas Avenue  
Douglas Avenue, Washington Street to Sycamore Street  
Main Street, First Street to Williams Street  
Waco Street, Douglas Avenue to Ninth Street  
First Street/Second Street, McLean Boulevard to Wichita Street  
Second Street, Wichita Street to Riverview Street  
Third Street, Wichita Street to Waco Street  
Central Avenue, Main Street to Greenway Boulevard  
Murdock Street, Water Street to West Stackman Drive  
Eight Street, Waco Street to Backbay Boulevard  
Backbay Boulevard, Eight Street to Ninth Street  
Ninth Street, Backbay Boulevard to Biting Street  
Jefferson Street, Eighth Street to Oak Park Drive  
Oak Park Drive, Biting Street to Eleventh Street  
Biting Street, Tenth Street to West River Boulevard  
Forest Street, Oak Park Drive to Eleventh Street  
Eleventh Street, Oak Park Drive to West River Boulevard  
Briggs Street, West River Boulevard to Litchfield Street  
Litchfield Street, West River Boulevard to Faulkner Street  
Faulkner Street, West River Boulevard to Buffum Street  
Buffum Street, West River Boulevard to Carter Street  
Carter Street, West River Boulevard to Riverside Avenue  
Riverside Avenue, West River Boulevard to Nims Street  
Nims Street, Franklin Street to West River Boulevard  
Wiley Street, West River Boulevard to Murdock Street  
West River Boulevard, Eleventh Street to Murdock Street  
Stackman Drive, Murdock Avenue to Central Avenue  
Nims Street, Riverside Park Drive to Central Avenue  
Spaulding Street, Murdock Avenue to Stackman Drive  
Gilman Street, Murdock Street to Buffum Street  
Buffum Street, Stackman Drive to Faulkner Street  
Faulkner Street, Stackman Drive to Pine Street  
Pine Street, Stackman Drive to Sim Park Drive  
Sim Park Drive, Stackman Drive to Central Avenue  
Central Avenue, Nims Street to Seneca Street  
Seneca Street, Central Avenue to McLean Boulevard  
McLean Boulevard, Seneca Street to Taft Street  
Sycamore Street, McLean Boulevard to Maple Street  
Maple Street, McLean Boulevard to Lewis Street

City of Wichita  
City Council Meeting  
May 15, 2012

**TO:** Mayor and City Council

**SUBJECT:** Central Library Architectural Programming Supplemental Agreement (District VI)

**INITIATED BY:** Wichita Public Library

**AGENDA:** New Business

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**Recommendation:** Approve the supplemental agreement.

**Background:** The Wichita Public Library System Master Plan 2006-2021 was endorsed by the City Council on September 12, 2006. A full summary of the Master Plan implementation process is provided as an attachment to this agenda report. Key benchmarks and actions since the plan was endorsed include:

- August 14, 2007: New Central Library included in the 2007-2016 Capital Improvement Program
- November 6, 2007: Bonding resolution for Central Library project approved
- June 3, 2008: Real Estate Purchase Contract and Lease Agreement to acquire property at 711 West 2<sup>nd</sup> Street as the location for a new Central Library approved
- April 21, 2009: HBM Architects selected to complete building program for new Central Library
- February 16, 2010: Central Library building program approved by Library Board of Directors
- February 23, 2010: Central Library building program presented to City Council in workshop
- March 20, 2012: Library Board voted to recommend a supplemental agreement with HBM Architects to refine the Central Library building program into a phased construction project with the scope of service to include schematic designs with build-outs

**Analysis:** The preliminary project budget for a 135,000 square foot Central Library as contained in the Master Plan was approximately \$35,000,000. This budget was prepared using 2006 dollars and did not include inflation or property acquisition. A project budget analysis in the Central Library building program for a similarly sized (137,600 square foot) facility was \$37,840,000 in 2009 dollars without inflation projections. The Library Board of Directors recognizes that while local economic conditions have changed, the need for an expanded and more flexible Central Library facility has not. Delays for the Central Library also postpone action on needed branch library improvements.

During the City Council workshop on the building program, the idea of phasing construction in order to bring the project into closer alignment with the Capital Improvement Program project budget was suggested. The recommendation was made again a few months ago after the 2011 Expansion Study confirmed that needs of the Library cannot be met by the current facility. Proceeding with the supplemental agreement does not commit the Council to construction of a new Central Library but does take the next appropriate planning step, allowing the project to stay on the schedule outlined in the Capital Improvement Program for 2011-2021.

The proposed scope of service for the recommended work includes fourteen steps to be completed over approximately seven months. Work will begin by collecting and building consensus on priorities and key strategies for a smaller facility with options for phased expansion. Concept diagram options will be used to test key strategies, to explore ideas for work flows, adjacencies, flexibility and expandability of the proposed facility. Once consensus about the most appropriate options has been established, concepts will be developed into schematic designs to test spatial functionalities and work flow efficiencies. A charette will provide opportunities for sharing of ideas and input from local architecture firms before the revised program and schematic design are finalized.

Members of the Library Board believe that refining the building program into a phased project with schematic design will have three distinct benefits: 1) it will affirm that the most immediate needs for new kinds of spaces and operating efficiencies can be accomplished within a smaller initial facility; 2) it will enable the Library to better predict for the City Council the impact of a new library on the General Fund budget; and 3) it will provide a tool for the Wichita Public Library Foundation to use in a capital campaign to bring “margin of excellence” dollars to the proposed project.

**Financial Considerations:** The total cost of the supplemental project, including reimbursable expenses, will not exceed \$150,000. The Friends of the Wichita Public Library will provide \$15,000 of the funding. The remaining costs will be funded through the project budget in the Capital Improvement Program.

**Goal Impact:** Creation of a new Central Library supports City of Wichita goals for Quality of Life and Neighborhoods as well as Visioneering Wichita’s goals for downtown development and libraries.

**Legal Considerations:** The supplemental agreement and scope of services has been approved as to form by the Law Department.

**Recommendation/Action:** It is recommended that the City Council approve the supplemental agreement for revisions to the building program for the new Central Library and authorize the Mayor to sign the contract.

**Attachments:** Master Plan Summary of Process; Initial Agreement; Proposed Supplemental Agreement and Scope of Service

## WICHITA PUBLIC LIBRARY SYSTEM MASTER PLAN SUMMARY OF PROCESS

January 2004	Library Board of Directors initiates assessment of 1999 Strategic Plan of the Wichita Public Library Board for Branch Development and determines that an update of the plan is needed
November 2004	Library Board accepts offer from Library Foundation and Friends of the Library for gift of professional assistance to help with update of a facilities strategic plan to include the Central Library as well as branch locations
March 2005	Gossen Livingston Associates selected to help develop a master plan for Wichita Public Library facilities
October – December 2005	Focus groups and telephone surveys facilitated by the Research Partnership used to gather information from citizens about Library facilities, programs and services
July-August 2006	Preliminary master plan concepts reviewed with District Advisory Boards
August 2006	Wichita Public Library System Master Plan adopted by Library Board
September 2006	Wichita Public Library System Master Plan endorsed by City Council
August 2007	New Central Library project included in Capital Improvement Program 2007-2016 at a budget of \$30 million across years 2008-2012
November 2007	Bonding resolution to initiate new Central Library project approved by City Council
June 2008	After evaluating numerous locations including but not limited to the former Cox Communications building, and property near Lawrence-Dumont Stadium and properties near Seneca and McLean, City Council approved purchase of property at 711 West 2 <sup>nd</sup> as the location of a new Central Library
November 2008	Request for Qualifications distributed to 40+ firms seeking architectural services for creation of a building program for a new Central Library
April 2009	HBM Architects selected to create Central Library building program
June-July 2009	Series of stakeholder and citizen focus group meetings held to gather feedback about expectations and preferences for Central Library changes
February 2010	Central Library Building Program adopted by Library Board of Directors and presented to City Council
February 2011	LawKingdon Architecture hired to complete assessment and feasibility study for of current Central Library
August 2011	LawKingdon study confirmed that remodeling and/or expansion of the current Central Library would cost more than new construction without generating equivalent operating efficiencies or parking improvements
March 2012	Library Board recommends supplemental agreement with HBM Architects to refine the Central Library building program into a phased construction project with the scope of service to include schematic designs with build-outs

**CONTRACT FOR ARCHITECTURAL PROGRAMMING SERVICES  
NEW CENTRAL LIBRARY**

THIS AGREEMENT, Made and entered into this 21<sup>st</sup> day of April, 2009,

BY AND BETWEEN

THE CITY OF WICHITA, KANSAS,  
A Municipal Corporation, hereinafter  
referred to as  
**"OWNER"**

AND

HOLZHEIMER BOLEK + MEEHAN  
ARCHITECTS, LLC hereinafter referred to as  
**"CONSULTANT"**

WHEREAS, The CITY is authorized by law to employ consulting architects to assist in the architectural programming and the estimates of costs of work for the PROJECT; and

WHEREAS, the **OWNER** desires to have architectural programming services performed resulting in a document (Architectural program) fully outlining the criteria that will be used later by the architectural firm selected through the second RFP process (Architects) in developing the functional design of the Central Library hereinafter referred to as the "PROJECT"; and

WHEREAS, **CONSULTANT** wishes to provide professional services to the **OWNER** to do such programming, evaluation, and related services therefore:

NOW, THEREFORE, in consideration of the promises and covenants herein contained and to be performed, the parties hereto agree as follows:

**I. PURPOSE:**

The **OWNER** employs the **CONSULTANT**; and **CONSULTANT** agrees to perform all necessary professional services hereinafter set forth in connection with the "PROJECT" of the City of Wichita, New Central Library, located generally at 223 S. Main Street, Wichita, Sedgwick County, Kansas.

**II. BASIC SERVICES:**

The **CONSULTANT** shall render all professional services necessary as set out in Scope of Services, **EXHIBIT "B"** a copy of which is attached hereto and which is incorporated herein by reference.

**III. THE CONSULTANT AGREES**

- A. To provide the various technical and professional services and transportation to perform the tasks as outlined in the SCOPE OF SERVICES (Exhibit "B").
- B. To attend meetings with the **OWNER** and other local, State and Federal agencies as necessitated by the SCOPE OF SERVICES (Exhibit "B").



- C. To make available during regular office hours, all calculations, sketches and drawings such as the **OWNER** may wish to examine periodically during performance of this Agreement.
- D. To save and hold **OWNER** harmless against all suits, claims, damages and losses for injuries to persons or property to the extent arising from or caused by the negligent acts, errors or omissions of **CONSULTANT**, its agents, servants, employees, or subcontractors occurring in the performance of its services under this Contract.
- E. To maintain books, documents, papers, accounting records and other evidence pertaining to costs incurred by **CONSULTANT** and, where relevant to method of payment, to make such material available to the **OWNER**.
- F. To comply, consistent with its professional standard of care, with Federal, State and local laws, ordinances and regulations applicable to the work. To comply with Title VI of the Civil Rights Act of 1964, and to comply with the **OWNER'S** Affirmative Action Program as set forth in Exhibit "A" which is attached hereto and adopted by reference as though fully set forth herein.
- G. To accept compensation for the work herein described in such amounts and at such periods as provided in Article V and that such compensation shall be satisfactory and sufficient payment for all work performed, equipment or materials used and services rendered in connection with the tasks as outlined in the SCOPE OF SERVICES (Exhibit "B").
- H. To complete the services to be performed by **CONSULTANT** within the time allotted for the PROJECT in accordance with Paragraph VI, Time of Completion; EXCEPT that the **CONSULTANT** shall not be responsible or held liable for delays occasioned by the actions or inactions of the **OWNER** or other agencies, or for other unavoidable delays beyond the control of the **CONSULTANT**.
- I. Covenants and represents to be responsible for the professional and technical accuracy and the coordination of all architectural programming services and/or other work or material furnished by the **CONSULTANT** under this Agreement. **CONSULTANT** further agrees, covenants and represents, that all architectural programming services and other work or material furnished by **CONSULTANT**, its agents, employees and subcontractors, under this Agreement, including any addition, alterations or amendments thereof, shall be prepared consistent with its professional standard of care in an effort to be free from negligent errors or omissions.
- J. **CONSULTANT** shall procure and maintain such insurance as will protect the **CONSULTANT** from damages resulting from the negligent acts of the **CONSULTANT**, its officers, and employees in the performance of the professional services rendered under this Agreement. Such policy of insurance shall be in an amount not less than \$500,000.00 subject to a deductible of \$10,000.00. In addition, a Workman's Compensation and Employer's Liability Policy shall be procured and maintained. This policy shall include an "all state" endorsement. Said insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment, which, for any

reason, may not fall within the provisions of the Workman's Compensation Law. The liability limit shall be not less than:

Workman's Compensation - Statutory  
Employer's Liability - \$500,000 each occurrence

Further, a comprehensive general liability policy shall be procured and maintained by the **CONSULTANT** that shall be written in a comprehensive form and shall protect **CONSULTANT** against all claims arising from injuries to persons (other than **CONSULTANT'S** employees) or damage to property of the **OWNER** or others arising out of any negligent act or omission of **CONSULTANT**, its agents, officers, employees or subcontractors in the performance of the professional services under this Agreement. The liability limit shall not be less than \$500,000.00 per occurrence for bodily injury, death and property damage. Satisfactory Certificates of Insurance shall be filed with the **OWNER** prior to the time **CONSULTANT** starts any work under this Agreement. In addition, insurance certificates applicable hereto shall contain a provision that provides that the **OWNER** shall be given ten (10) days written notice by the insurance company before such policy is canceled.

- K. To designate a Project Manager for the coordination of the work that this Agreement requires to be performed. The **CONSULTANT** agrees to advise the **OWNER**, in writing, of the person designated as Project Manager not later than five (5) days following issuance of the notice to proceed on the work required by this Agreement. The **CONSULTANT** shall also advise the **OWNER** of any changes in the person designated Project Manager. Written notification shall be provided to the **OWNER** for any changes exceeding one week in length of time.

The designated Project Manager SHALL coordinate ALL aspects of this Project through the **OWNER'S** Project Manager. Any requests from any other staff agency, which would affect the **CONSULTANTS** time or expense relative to this Project, **MUST** be approved by the **OWNER'S** Project Manager.

#### IV. THE OWNER AGREES:

- A. To furnish all available data pertaining to the PROJECT now in the **OWNER'S** files at no cost to the **CONSULTANT**. Confidential material so furnished will be kept confidential by the **CONSULTANT**.
- B. To provide standards as required for the PROJECT; however, reproduction costs are the responsibility of the **CONSULTANT**, except as specified in EXHIBIT "C".
- C. To pay the **CONSULTANT** for his services in accordance with the requirements of this Agreement.
- D. To provide the right-of-entry for **CONSULTANT'S** personnel in performing field surveys and observations.



- E. To designate a Project Manager for the coordination of the work that this Agreement requires to be performed. The **OWNER** agrees to advise, the **CONSULTANT**, in writing, of the person designated as Project Manager with the issuance of the notice to proceed on the work required by this Agreement. The **OWNER** shall also advise the **CONSULTANT** of any changes in the person designated Project Manager. Written notification shall be provided to the **CONSULTANT** for any changes exceeding one week in length of time.
- F. To examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by **CONSULTANT** in a timely fashion.
- G. To save and hold **CONSULTANT** harmless against all suits, claims, damages and losses for injuries to persons or property arising from or cause by errors, omissions, or negligent acts of **OWNER**, its agents, servants, employees, or subcontractors occurring in the performance of its services under this Contract.

#### **V. PAYMENT PROVISIONS:**

The **OWNER** agrees to pay the **CONSULTANT** for services rendered under this Agreement and as specifically detailed in Scope of Services, **EXHIBIT "B"** and in Budget for Reimbursable Expenses, **EXHIBIT "C"**, a total fee established as follows:

- A. For the complete architectural programming services and other related items including those items identified in SCOPE OF SERVICES, **EXHIBIT "B"** a **not to exceed fee of one hundred one thousand, two hundred eighty dollars (\$101, 280.00)** plus reimbursable expenses for the services. An initial payment of **five thousand dollars (\$5,000.00)** shall be made upon execution of this Agreement and credited to the Owner's account at final payment.
- B. Payments are payable to the **CONSULTANT** within thirty (30) working days from the date of receipt of invoice. If any invoice is outstanding for more than thirty (30) working days from the date due, the **CONSULTANT** shall have the right, in addition to any and all other rights provided, to refuse to render further services to the **OWNER** and such act or acts shall not be deemed a breach of this agreement. Continued performance and/or completion of work by the **CONSULTANT** under this agreement are contingent upon payment of fees by the **OWNER**. The **OWNER** shall reimburse the **CONSULTANT** for all costs incurred in collection of unpaid accounts, including, without limitation, all reasonable attorney and legal expenses.
- C. When requested by the **OWNER**, the **CONSULTANT** will enter into a Supplemental Agreement for additional services related to the PROJECT such as, but not limited to:
  - 1. **CONSULTANT** or witness for the **OWNER** in any litigation, administrative hearing, and other legal proceedings related to the PROJECT.
  - 2. Additional design services not covered by the scope of this Agreement.



3. Construction staking, material testing, observation and administration related to the PROJECT.
  4. A major change in the SCOPE OF SERVICES for the PROJECT.
- D. If additional work should be necessary, the **CONSULTANT** will be given written notice by the **OWNER** along with a request for an estimate of the increase necessary in the not-to-exceed fee for performance of such additions. No additional work shall be performed nor shall additional compensation be paid except based on a Supplemental Agreement duly entered into by the parties.
  - E. If services are rendered by the **CONSULTANT** for the PROJECT(s) or portions of the PROJECT(s), but the **OWNER** elects to cancel the PROJECT(s) or portions thereof the **CONSULTANT** shall be compensated at an amount in proportion to the services rendered as stated in Paragraph A above, multiplied by the percentage completed.
  - F. This fee shall be payable in monthly installments, and in proportion to the services performed, payable upon the satisfactory performance of the service.

#### **VI. TIME OF COMPLETION:**

The **CONSULTANT** agrees to complete all Programming Phases of this PROJECT as follows:

- A. For the Architectural Programming phase: one hundred eighty (180) working days from the date of approval of the Contract pending availability of **OWNER** and staff.
- B. The **OWNER** agrees to cooperate with the **CONSULTANT** in considering documents, drawings and data submitted and to make necessary decisions promptly to facilitate completion in the stipulated time, and the **OWNER** agrees to furnish promptly to the **CONSULTANT** upon written request any approvals and instructions required to be given by the **OWNER** to the **CONSULTANT** under the terms of the Contract.

#### **VII. REVISIONS OF PLANS:**

(Does not apply – reviewing and setting the budget is part of the programming process)

#### **VIII. THE PARTIES HERETO MUTUALLY AGREE:**

- A. That the right is reserved to the **OWNER** to terminate this Agreement, upon fourteen days prior written notice, in the event the PROJECT is to be abandoned or indefinitely postponed, or because of the **CONSULTANT'S** inability to proceed with the work, or because the services of the **CONSULTANT** are unsatisfactory; PROVIDED, however, that in any case the **CONSULTANT** shall be paid the reasonable value of the services rendered up to the time of termination on the basis of the provisions of this Agreement, in no case shall payment be more than the **CONSULTANT'S** actual costs plus a fee for profit based upon a fixed percentage of the **CONSULTANT'S** actual costs. The **CONSULTANT** may terminate this Agreement upon giving the **OWNER** 30 days prior

written notice for breach by the **OWNER** of any material term, including but not limited to payment terms.

- B. That the field notes and other pertinent drawings and documents pertaining to the **PROJECT** shall become the property of the **OWNER** upon completion or termination of the **CONSULTANT'S** services and payment in full of monies due the **CONSULTANT**, in accordance with this Agreement. The **OWNER** shall not re-use or make any modification of the plans and specifications without the prior written authorization of the **CONSULTANT**. The **OWNER** agrees to hold the **CONSULTANT** harmless from all claims, liability or cost, including reasonable attorney fees and defense costs, which arise out of such further use without the participation of the **CONSULTANT**.
- C. That the services to be performed by the **CONSULTANT** under the terms of this Agreement are personal and cannot be assigned sublet or transferred without specific consent of the **OWNER**. The **OWNER** shall not assign or transfer rights or interest in this Agreement without specific consent of the **CONSULTANT**.
- D. In the event of unavoidable delays in the progress of the work contemplated by this Agreement, reasonable extensions in the time allotted for the work will be granted by the **OWNER**, provided, however, that the **CONSULTANT** shall request extensions, in writing, giving the reasons therefore.
- E. It is further agreed that this Agreement and all Contracts entered into under the provisions of this Agreement shall be binding upon the parties hereto and their successors and assigns.
- F. Neither the **OWNER'S** review, approval or acceptance of, nor payment for, any of the work or services required to be performed by the **CONSULTANT** under this Agreement shall be construed to operate as a waiver of any right under this Agreement or any cause of action arising out of the performance of this Agreement.
- G. The rights and remedies of the **OWNER** and the **CONSULTANT** provided for under this Agreement are in addition to any other rights and remedies provided by law.
- H. It is specifically agreed between the parties executing this Contract, that it is not intended by any of the provisions of any part of this Contract to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this Contract to maintain a suit for damages pursuant to the terms or provisions of this Contract.
- I. Unless otherwise stipulated in this Agreement, all subcontractors retained to assist **CONSULTANT** in performing his duties will be paid by the **CONSULTANT**.
- J. (Does not apply to architectural programming services)
- K. Special Consultants or Subcontractors are those who provide services other than those provided by the **CONSULTANT**. If it is requested that any Special Consultants or



Subcontractors be retained on the **OWNER'S** behalf, their charges will be paid separately and directly by the **OWNER**. Invoicing and payment shall be arranged separately between the **OWNER** and the Special Consultants or Subcontractors.

- L. If a firm or firms are separately engaged by the **OWNER** to work under the general direction of the **CONSULTANT**, the **CONSULTANT** shall have no responsibility or technical sufficiency of the services of such separately engaged firms.
- M. It is further agreed that this Agreement and all Contracts entered into under the provisions of this Agreement shall be governed by the laws of the State of Kansas.
- N. Unless otherwise provided in this Agreement, the **CONSULTANT** and employees, or subcontractors shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances.

IN TESTIMONY WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

CITY OF WICHITA, KANSAS



Carl G. Brewer  
Mayor



ATTEST:

HOLZHEIMER BOLEK + MEEHAN  
CONSULTANTS, LLC

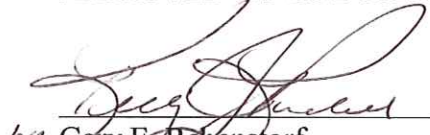


Karen Sublett  
City Clerk

by   
Daniel T. Meehan, Jr. AIA Principal

DANIEL T. MEEHAN JR.  
Print Name

APPROVED AS TO FORM:

  
Gary E. Rebenstorf  
Director of Law

PRINCIPAL  
Title

Exhibit A

**REVISED NON-DISCRIMINATION AND  
EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM  
REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS**

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements:

- A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.
- B. Requirements of the State of Kansas:
  - 1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
  - 2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
  - 3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
  - 4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
  - 5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.



C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:

1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;
2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;
4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.
5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars (\$5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.

2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

# EXHIBIT B

IBM | PROVIDENCE

## SCOPE OF SERVICES

### Wichita Public Library - New Central Library Building Program

March 2, 2009

STEP	MONTH	DESCRIPTION	TASKS / PLANNING PROCESS COMPONENTS	Team Hours					
				Dan	Peter	Laura	David	Renee	Jamie
Step 1	1		Gather and receive information and data from the library.	4	4	4	2	8	
			Gather and format baseline information for current SF areas, collection, shelving, seating, , etc.	4	12			40	16
			Gather and organize background research and information.	2	8	8	8	16	
			Plan and prepare preliminary drafts of community input instruments (questionnaires, interview topics, and focus group agendas)	4	8	8	4	8	
Step 2	1	Team Visit	Become acquainted with the library staff and key stakeholders	4	4	4	4		
			Gain an understanding of the functions and management practices of the library	4	4	4	4		
			Review and discuss preliminary data and information	4	4	4	4	4	
			Verify and update baseline information					16	
			Review drafts of community input instruments	4	4	4	4		
			Discuss visioning for the future	4	4	4	4		
Step 3	1		Process and format information obtained from the Step 2 Team Visit	4	12	8	8	20	
Step 4	2	Team Visit	Conduct interviews, discussions, and focus groups with staff, boards, city officials, community and other stake holders. Review peer comparison data compiled by Library.		16	16	16		
Step 5	2		Compile and analyze information from the Step 4 team visits and organize observations and preliminary conclusions to share with the Library		8	8	4	16	
Step 6	3		Coordinate presentation of comparable libraries for Step 7 (Library has images from tours to Salt Lake, Minneapolis, & Seattle)	Time for coordinating this task with the Library is included in Steps 2 through 5					
Step 7	3	Team Visit	Conduct Brainstorming Sessions / Charrettes as a part of the visioning process and follow up to the tours, peer comparison and stake holder interviews	8	8	8	8		
Step 8	4		Develop Trial Programming Documents based on all previous information. This package will include a Written Building Program, Space Needs Analysis, and Spatial Vignettes	4	12	8	4	60	16
Step 9	4	By Phone Conference	Review and discuss the Trial Programming Documents with the Library		4	4			
Step 10	5		Revise and refine the Trial Program Documents based on feedback	2	4	4		16	4
Step 11	5		Develop Graphic Diagrams delineating the functional relationships of spaces in the Trial Program Documents	4	8			16	16
Step 12	5		Develop a Comprehensive Budget for a new building based on the Trial Program Documents	4	8	2	2		
Step 13	5	Team Visit (may combine with Step 15)	Review and discuss the revised Trial Program Documents, Graphic Diagrams & Comprehensive Budget with the Library		8	8			
Step 14	6		Refine and finalize the Program Documents, Graphic Diagrams, and Comprehensive Budget based on input received from the Library and compile the Final Building Program Documents	4	8	4	4	16	4
Step 15	6	Team Visit (may combine with Step 13)	Present and deliver the Final Building Program Documents	8	8				
Step 16	After 6	Phase 2	Assist with presenting the Building Program as needed	Time and Fee for these services are additional or part of the Phase 2 services					
TOTAL HOURS				72	156	110	80	236	56
Hourly Rates				\$185	\$185	\$150	\$150	\$100	\$125
Fee Sub Totals				\$13,320	\$28,860	\$16,500	\$12,000	\$23,600	\$7,000
TOTAL FEE (does not include reimbursables)				\$101,280					



## EXHIBIT C

### IBM | PROVIDENCE

#### Budget for Reimbursable Expenses

March 2, 2009

#### Wichita Public Library - New Central Library Building Program

Reimbursable expenses will be invoiced at cost plus a 10% administrative fee.

#### Basis for Travel Expense Budget: (used costs from recent visit)

Airfare	coach class	used \$400 per person roundtrip
Rental Car	Budget mid-size	used \$60 per day
Hotel	Holiday Inn Express rates	used \$125 per person per night
Meals	per diem (breakfast included w/ hotel)	used \$50 per person

#### Budget Summary

Step 2 Team Visit	\$5000
Step 4 Team Visit	\$3200
Step 7 Team Visit	\$2500
Step 13 Team Visit	\$1500
Step 15 Team Visit	\$1500
Printing / Plotting / Special Delivery	\$5000
10% administrative fee	<u>\$1870</u>
TOTAL	\$20,570

SUPPLEMENTAL AGREEMENT TO  
CONTRACT FOR ARCHITECTURAL PROGRAMMING SERVICES  
NEW CENTRAL LIBRARY

THIS SUPPLEMENTAL AGREEMENT, Made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2012,

BY AND BETWEEN

THE CITY OF WICHITA, KANSAS,  
A Municipal Corporation, hereinafter  
referred to as

**"OWNER"**

AND

HOLZHEIMER BOLEK + MEEHAN  
ARCHITECTS, LLC hereinafter  
referred to as

**"CONSULTANT"**

WHEREAS, the **OWNER** and **CONSULTANT** entered into an Agreement between Owner and Consultant, dated April 21, 2009, "Contract For Architectural Programming Services For New Central Library", hereinafter referred to as the "AGREEMENT"; and

WHEREAS, the **OWNER** desires to have preliminary schematic design services performed for the functional design of the Central Library hereinafter referred to as the "PROJECT"; and

WHEREAS, **CONSULTANT** wishes to provide professional services to the **OWNER** to do such additional design services for the preliminary schematic design, and related services; and

WHEREAS, the **OWNER** desires to amend the AGREEMENT for additional services related to the PROJECT as provided for in Section V, Paragraph C, Item 2 of said AGREEMENT; the amended agreement is hereinafter referred to as the "SUPPLEMENTAL AGREEMENT".

NOW, THEREFORE, it is mutually agreed by and between the parties hereto as follows:

1. The AGREEMENT is amended to include following supplemental provisions:

**X. SUPPLEMENTAL AGREEMENT:**

**A. SCOPE OF SUPPLEMENTAL SERVICES:**

The **CONSULTANT** shall render all additional professional services necessary as set out in Scope of Services, **EXHIBIT "D"** a copy of which is attached hereto and which is incorporated herein by reference.

**B. PAYMENT FOR SUPPLEMENTAL SERVICES:**

For the complete preliminary schematic design services and other related items including those items identified in SCOPE OF SERVICES, EXHIBIT "D" and Budget for Reimbursable Expenses, EXHIBIT "E", the OWNER agrees to pay an amount **not to exceed fee of one hundred fifty thousand dollars (\$150,000.00)**. An initial payment of **five thousand dollars (\$5,000.00)** shall be made upon execution of this Agreement and credited to the Owner's account at final payment.

**C. TIME OF COMPLETION OF SUPPLEMENTAL SERVICES:**

The **CONSULTANT** agrees to complete all additional services for the preliminary schematic design of this PROJECT as follows:

1. For the Preliminary Schematic Design phase: one hundred eighty (180) working days from the date of approval of the SUPPLEMENTAL AGREEMENT pending availability of **OWNER** and staff.
2. The **OWNER** agrees to cooperate with the **CONSULTANT** in considering documents, drawings and data submitted and to make necessary decisions promptly to facilitate completion in the stipulated time, and the **OWNER** agrees to furnish promptly to the **CONSULTANT** upon written request any approvals and instructions required to be given by the **OWNER** to the **CONSULTANT** under the terms of the AGREEMENT.
2. In all other respects, the terms and provisions of the April 21, 2009 Agreement, between the parties hereto shall remain in force and effect as the same were originally approved by the parties.

IN TESTIMONY WHEREOF, the parties hereto have executed this SUPPLEMENTAL AGREEMENT the day and year first above written.

CITY OF WICHITA, KANSAS

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Carl G. Brewer  
Mayor

ATTEST:

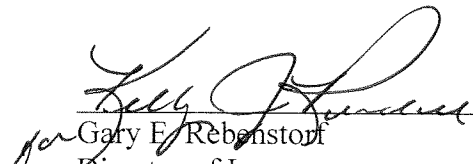
HOLZHEIMER BOLEK + MEEHAN  
CONSULTANTS, LLC

\_\_\_\_\_  
Karen Sublett  
City Clerk

by \_\_\_\_\_  
Daniel T. Meehan, Jr. AIA Principal

APPROVED AS TO FORM:

\_\_\_\_\_  
Print Name

  
for Gary E. Rebenstorf  
Director of Law

\_\_\_\_\_  
Title

## EXHIBIT D



## SCOPE OF SERVICES

April 19, 2012

## Wichita Central Library - Preliminary Schematic Design

STEP		MONTH	VISITS	TASKS	HOURS
kick off	Step 1	1		Get survey / site plan in electronic format from the city. Organize thoughts & strategies for adapting the program to a smaller space with potential phased expansion. Develop diagramming of ideas for initial discussions Develop a preliminary site analysis for initial discussions. Develop a preliminary project budget breakdown for initial discussions.	40
	Step 2	1	Visit	Work sessions & brainstorming with the director and key staff. Talk through thoughts, strategies, diagramming, and analysis done in Step 1. Build consensus on priorities and key strategies for a smaller central library with options for phased expansion.	12
initial concepts	Step 3	2		Based on the work sessions & brainstorming in Step 2 test key strategies by developing concept diagram options . Explore ideas for flow, adjacencies, flexibility, and expandability.	80
	Step 4	2	Visit	Work sessions with the director and key staff. Talk through concept diagram options and key strategies described in Step 3. Get feedback to develop and test options further.	12
refine concepts	Step 5	3		Develop and refine concept diagram options based on the feedback from the work sessions in Step 4. Indicate how areas work together for flow, adjacencies, flexibility, and expandability.	80
	Step 6	3	Visit	Work sessions with director, key staff, library board, and city manager to review concept diagrams developed in Step 5. Come to consensus on options to develop into schematic design	16
begin schematic design	Step 7	4		Develop concept options into schematic design. Indicate spaces with furniture, shelving, display, and work areas. Spaces and building will now take form to understand how spaces work together for flow, adjacency, flexibility and expandability.	120
	Step 8	4	Visit	Work sessions with the director and key staff. Review initial schematic design ideas and talk through flow, functionality, flexibility, and expandability of library spaces. Get feedback to refine and focus the schematic design further.	12
refine schematic design	Step 9	5		Refine the Schematic Design options and add more detail based on feedback from Step 8. Look more closely at how expansion options integrate into the design	120
	Step 10	5	Visit	Work sessions with director, key staff, library board, and city manager to review the Schematic Design options. Come to consensus on the option to continue to develop.	16
				Charette with local architectural firms. Review the process and development of concepts and preliminary schematic design to this point. Share ideas and encourage input.	4
formalize schematic design	Step 11	6		Refine the Schematic Design based on feedback. Include the complete interior layout, building form with expansion options, and site layout.	120
	Step 12	6	Visit	Work sessions with the director, key staff, library board, city manager, key city staff to review the Schematic Design. Identify any concerns to address before finalizing the schematic design.	16
finalize schematic design	Step 13	7		Refine and finalize the Schematic Design	40
	Step 14	7	Visit	Meet with library board and city council to present the Schematic Design .	12
TOTAL HOURS					700
Hourly Rate (combined)					\$175
FEE (does not include reimbursable expenses)					\$122,500

## EXHIBIT E



April 19, 2012

### **Wichita Central Library – Preliminary Schematic Design BUDGET FOR REIMBURSABLE EXPENSES**

Reimbursable expenses will be invoiced at cost plus a 10% administrative fee.

#### **Basis for Travel Expense Budget:**

Airfare	coach class	used \$700 per person roundtrip
Rental Car	Budget mid-size	used \$85 per day
Hotel	Holiday Inn Express rates	used \$155 per person per night
Meals	per diem	used \$60 per person
Airport Transportation / Parking		used \$20 per day per person

#### **Budget Summary**

Step 2 Visit	\$2,000
Step 4 Visit	\$2,000
Step 6 Visit	\$2,000
Step 8 Visit	\$2,000
Step 10 Visit	\$2,000
Step 12 Visit	\$2,000
Step 14 Visit	\$2,000
Printing / Plotting / Special Delivery	\$6,000
Contingency (for airfare increases & added steps / visits)	\$5,000
10% administrative fee	<u>\$2,500</u>
<b>TOTAL REIMBURSABLES BUDGET</b>	<b>\$27,500</b>

City of Wichita  
City Council Meeting  
May 15, 2012

**TO:** Mayor and City Council

**SUBJECT:** Proposed ordinance creating Chapter 9.35, and repealing Chapters 9.20 and 9.22 of the Code of the City of Wichita

**INITIATED BY:** Department of Airports

**AGENDA:** New Business

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**Recommendation:** Place the ordinance on first reading.

**Background:** Over the past 18 months the Law and Airport Departments have worked cooperatively to develop a comprehensive re-write of the Code of the City of Wichita, pertaining specifically and uniquely to operations on and around the Airport system.

This proposed ordinance does not contain any regulatory matter that is considered overlapping, redundant or duplicative of other existing City codes. It is intended to address only those activities unique to airports. It is staff's opinion that this proposed ordinance does not add new, burdensome, onerous or other regulatory burden to the public.

This proposed ordinance is typical among airports of similar size and larger. The federal government, primarily through the FAA and TSA, imposes on commercial air carrier airports a substantial quantity of regulations, directives and compulsory guidelines. Most of these requirements are enforced directly upon airport owners/operators, without pass-through or multi-lateral encumbrance on third parties. By design and with intent, the federal government passes regulatory obligations to airport owners, who must then enact local legal instruments as a means to enforce these federal obligations.

**Analysis:** In September 2011, the proposed draft ordinance was uploaded to the Airport website and a notice sent to all airport tenants encouraging them to review and offer feedback on the draft. On November 8, 2011, an airport tenant/operator stakeholder meeting was held to receive comment from our tenant partners. On March 5, 2012, the Airport Advisory Board voted unanimously to recommend to the Wichita Airport Authority Board that this proposed draft ordinance be approved for adoption. On April 24, 2012, this item was presented in workshop to the City Council.

House Bill 2166 amends K.S.A. 12-3007 regarding the publication requirements of City ordinances. The bill has been approved and signed by the Governor. The bill allows, in lieu of publication of the entire text of an amended ordinance, that a summary may be published. Staff is recommending delaying publication of these amendments until after July 1, 2012. Delay of the publication of the ordinance will result in a budget savings of approximately \$4,000.

**Financial Considerations:** Delaying publication of the ordinances until after July 1, 2012 will save approximately \$4,000 in publication costs.

**Goal Impact:** The Wichita Airport Authority's contribution to the Economic Vitality and Quality of Life of Wichita is promoted through providing facilities and services which enhance the efficiency, effectiveness, safety, and security to the traveling public and its tenant partners.

**Legal Considerations:** The Law Department has reviewed and approved the ordinance as to form.

**Recommendations/Actions:** Place the ordinance on first reading.

**Attachments:** Proposed Ordinance.



First Published in The Wichita Eagle on July 2, 2012

ORDINANCE NO. 49-273

AN ORDINANCE CREATING CHAPTER 9.35 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO AIRPORTS AND REPEALING CHAPTERS 9.20 AND 9.22 OF THE CODE OF THE CITY OF WICHITA, KANSAS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

**SECTION 1.** Section 9.35.010 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Definitions.** For the purposes of this Chapter, the following words, terms and phrases shall have the meanings set forth below: (Note: words not specifically defined in this Section 1, which relate to aeronautical practices, processes, and equipment shall be construed according to their general usage in the aviation industry, or as defined by federal laws or advisory guidance documents.)

- (a) ‘Abandon’ means to forsake, desert, give up, and surrender one’s claim or right.
- (b) ‘Access and identification media’ or ‘ID media’ means any credential, card, badge, or other photo identification media issued by the Wichita Airport Authority for access and/or identification purposes. ID media does not include ‘visitor’ media issued to individuals who must be under Airport approved security escort to

access the Security Identification Display Area (SIDA), Sterile Area, or the Air Operations Area (AOA) on a limited-time or limited-use basis.

- (c) 'Aircraft' shall mean any contrivance now known or hereafter designed, invented or used for navigation or flight in the air space, except a parachute or other contrivance used primarily as safety equipment.
- (d) 'Air Operations Area' or 'AOA' means any area of the Airport identified by the Wichita Airport Authority and specified in the Airport Security Program, in which security measures specified in 49 CFR Part 1500 and amendments thereto are carried out. This includes aircraft Movement Areas, aircraft parking areas, loading ramps, and safety areas used or intended to be used for landing, taking-off or surface maneuvering of aircraft. Such term does not include leasehold areas within or having direct access to the AOA which are subject to security requirements imposed on a lessee or tenant under appropriate federal regulations or which are incorporated into a signed lease agreement.
- (e) 'Airport' means the Mid-Continent Airport, Col. James Jabara Airport, and any other airport owned by and under the control and jurisdiction of the Wichita Airport Authority.

- (f) 'Airport Authority' means the Wichita Airport Authority as established by Section 2.12.1040 of the Code of the City of Wichita, Kansas.
- (g) 'Airport motor vehicle parking facility' means any surface or enclosed facility used or intended to be used for non-exclusive (public) use of revenue producing or non-revenue producing parking of private motor vehicles on Airport property. Such term does not include leased parking facilities under a tenant lease agreement.
- (h) 'Airport property' means any property, facilities, and improvements owned, leased and/or under the control and jurisdiction of the Wichita Airport Authority and roads and streets contained thereon.
- (i) 'Airport Police and Fire Officer' means a person holding a State of Kansas law enforcement commission who is a member of the Airport Police and Fire Division of the City of Wichita Airport Department established pursuant to Section 2.12.1051 of the Code of the City of Wichita, Kansas.
- (j) 'Airport Security Program' or 'ASP' means a written program and procedures developed by the Airport Authority and approved by the Transportation Security Administration relative to the security of aircraft operations and users of the Airport and meeting the requirements of Transportation Security Regulation 1542.

- (k) 'Airport tenant' means any person holding an executed and current lease or license agreement with the Wichita Airport Authority for the lease of property and/or the conducting of certain specified commercial or non-commercial activities.
- (l) 'ATA' means Air Transport Association.
- (m) 'Apron' or 'ramp' means that area of the Airport within the AOA designated for the loading, unloading, servicing or parking of aircraft.
- (n) 'Authorized' means acting under or pursuant to a written contract, permit, authorization or other evidence of right issued by the Director of Airports.
- (o) 'City' means the City of Wichita, Kansas.
- (p) 'Code' means the Code of the City of Wichita, Kansas and amendments thereto.
- (q) 'Commercial' or 'commercial activity' means:
  - (1) the exchange, trading, buying, hiring or selling of commodities, goods, services or property of any kind on Airport property;
  - (2) engaging in any conduct on Airport property for revenue-producing purposes, whether or not currency, monetary exchange or other forms of monetary instruments ultimately are exchanged, obtained, or transferred on Airport property; or

- (3) the offering or exchange of any service on Airport property as a part of, or condition to, other revenue-producing activities or services on or off Airport property; or
  - (4) intended for the purpose of securing revenue, earnings, income, and/or compensation (including exchange for service), and/or profit, whether or not such objectives are accomplished.
- (r) ‘Commercial ground transportation provider’ means any person or entity, including its drivers, employees, and representatives, using Airport roadways or operating motor vehicles upon the Airport, in furtherance of or in connection with providing ‘on-demand’, charter, or pre-arranged transportation to persons for hire.
- (s) ‘Commercial passenger terminal’ means any passenger terminal facility or facilities operated for the purpose of boarding and de-boarding of commercial air travelers, including tenant, concession, security, and other support facilities including all ramps, roadways, vehicular, and pedestrian circulation areas and parking facilities associated therewith.
- (t) ‘Common use area’ means any area, whether leased or non-leased, used in common with, concurrent or in conjunction with, and by multiple parties. Such term shall include ‘non-exclusive area.’
- (u) ‘Control Tower’, ‘Air Traffic Control Tower’, or ‘ATCT’ means the Federal Aviation Administration’s control tower and terminal

radar air traffic control (TRACON) facilities that provide air traffic control services to aircraft and vehicles operating on the Movement Areas of the Airport and overlying airspace.

- (v) 'Director' means the Director of Airports of the City of Wichita or his or her duly authorized and designated representative(s).
- (w) 'Escort' means to accompany and monitor the activities and to maintain 'positive' and continuous visual and voice contact with any individual(s), under the escorting person's authority and responsibility, who do not have unescorted access authority into or within a Secured Area, SIDA, or AOA.
- (x) 'Escort authority' means the authority granted by the Wichita Airport Authority to a person authorized to escort individuals who do not have unescorted access authority into or within a Secured Area, SIDA, or AOA.
- (y) 'Equipment' means motorized mobile units, other than those commonly classified as motor vehicles, which are utilized in conjunction with the servicing of aircraft or the maintenance and operation of Airport facilities.
- (z) 'Event' means activities defined by the Standard Operating Procedures of the Airport Authority as an event.
- (aa) 'Explosives' means any chemical compound or mixture that has the property of yielding readily to combustion or oxidation upon application of heat, flame or shock, or any device, the primary

purpose of which is to function by explosion. The term ‘explosives’ includes, but is not limited to, dynamite, nitroglycerine, trinitrotoluene, ammonium nitrate when combined with other ingredients to form an explosive mixture, or other high explosives, detonators, safety fuses, squibs, detonating cords, igniter cords, and igniters. For purposes of this part explosives shall not include shotgun shells, cartridges or ammunition for firearms, or pyrotechnic devices.

- (bb) ‘FAA’ means the Federal Aviation Administration.
- (cc) ‘Flammable liquids’ means any liquid which emits flammable vapor as set forth in National Fire Protection Association standards, including but not limited to combustible liquids currently used as aircraft or vehicle fuel.
- (dd) ‘Fueling vehicle’ means a vehicle operated for the purpose of storing and dispensing fuels.
- (ee) ‘Law enforcement officer’ means any person holding a State of Kansas law enforcement commission or other officer vested with the power of arrest under federal or state authority.
- (ff) ‘Motor vehicle’ means a device in, upon or by which a person or property may be propelled, moved, or drawn upon land, except a device moved by human or animal power and except aircraft or devices moved exclusively upon stationary rails or tracks. The term ‘vehicle’ shall include taxis, cars, buses, vans, shuttles,

trucks, buses, limousines, and courtesy vehicles of any type or kind.

- (gg) 'Movement Area' means those portions of the AOA, such as runways and taxiways, used for taxiing, takeoff, and landing of aircraft, and in which all movement of aircraft and motor vehicles and equipment are at all times under the jurisdictional control and authority of the ATCT.
- (hh) 'NFPA' means National Fire Protection Association.
- (ii) 'Object Free Area' or 'OFA' means an area on the ground centered on a runway or taxiway that is required by federal regulation to be free of all foreign objects, except for those objects that must be located in the OFA because of their function.
- (jj) 'Operational need or necessity' is defined as law enforcement, security, emergency response, maintenance, or operations activity that requires the use of such device or access to such areas to perform an official function or duty.
- (kk) 'Operator' means any person who is in actual physical control of an aircraft, equipment or motor vehicle.
- (ll) 'Other authorized officer' means any non-commissioned officer and authorized representative of the Director of Airports, including Airport Services Officers and Airport Operations Officers of the City of Wichita Airport Department.



- (mm) 'Owner' means a person in whose name the legal title of an aircraft or motor vehicle is held or vested. If any aircraft or motor vehicle is the subject of a conditional sale or lease, with the right of purchase upon performance of the conditions stated in the agreement, and with the immediate right of possession vested in the conditional vendee or lessee or anyone in possession of an aircraft or motor vehicle on the Airports, or in the event a mortgagor of an aircraft or motor vehicle is entitled to the possession, then the conditional vendee, lessee or mortgagor shall be deemed the owner for the purpose of this Chapter.
- (nn) 'Park' means to put, leave or let a motor vehicle or aircraft stand or stop in any location whether the operator thereof leaves or remains in such vehicle or aircraft, when such standing or stopping is not required by traffic control or conditions beyond the control of the operator.
- (oo) 'Person' means any individual, firm, partnership, corporation, company, association or joint stock association, and includes any trustee, receiver, assignee or similar representative thereof.
- (pp) 'Public area' means any real estate, building or facility on Airport property, including grounds, roadways, streets and sidewalks which are not designated as an AOA, SIDA, Secured Area, Sterile Area or Restricted Area, not leased premises, or not specifically signed as a Restricted Area.

- (qq) 'Restricted Area' means any area of an Airport that is fenced, locked or posted by sign to prohibit or limit entry or access to only specific authorized persons.
- (rr) 'Runway hold short position' means the location on a taxiway where a pedestrian, pilot or operator of a motor vehicle or equipment is required by federal regulation to stop in the absence of receiving clearance onto a runway by the ATCT.
- (ss) 'Runway' means those Movement Areas of the Airport designated and used for the sole and specific purpose of takeoff and landing of aircraft.
- (tt) 'Sanitary waste' means liquid or solid wastes originating from humans and human activities, such as wastes collected from toilets, showers, wash basins, sinks used for cleaning domestic areas, sinks used for food preparation, clothes washing operations, and sinks or washing machines where food and beverage serving dishes, glasses, and utensils are cleaned. Such term includes legally permissible waste that is intended to be routed, deposited, and transported to/through a sanitary sewer system of the City of Wichita, including liquid and solid wastewater, sewage and/or industrial waste and not to which storm, surface, and ground water are intentionally admitted.
- (uu) 'Screening location' means a location or site at Mid-Continent Airport at which individuals and/or property are inspected for the

presence of weapons and other prohibited items as defined by Transportation Security Regulations.

- (vv) ‘Security challenge’ or ‘challenge’ means to verbally confront in a non-threatening, non-physical, and safe manner any person within the Secured Area, SIDA or Sterile Area of Airport property for the purpose of determining if such person is in possession of a current, correct, and appropriately issued access and identification media. Non-law enforcement personnel are not expected to place themselves or others in a dangerous or threatening situation resulting from a security challenge.
- (ww) ‘Secured Area’ means that designated portion of the Mid-Continent Airport Security Identification Display Area, encompassing the ramp footprint of the commercial passenger terminal concourse(s), aircraft loading bridges, aircraft parking, and baggage loading and unloading areas.
- (xx) ‘Security Identification Display Area(s)’ or “SIDA’ means that designated portion of Mid-Continent Airport property designated by the Airport Authority, in accordance with Transportation Security Regulations, in which each individual in the area is required to display on his or her person the identification media issued by the Airport Authority or such other form of identification as approved or required by the Airport Authority.

- (yy) ‘Security access identification control system’ or ‘computer controlled access system (CCAS)’ means the electronic system of computer and camera monitored access media readers, PIN pads, and/or other such approved access control devices designed and used for the purpose of providing for secured access and verifying valid access authorization.
- (zz) ‘Security sensitive information’ or ‘SSI’ means details of any security inspection or investigation of an alleged violation of aviation transportation security requirements of federal law that could reveal security vulnerabilities, including the identity of a federal special agent or other federal employee who conducted the inspection or audit and specific details of aviation transportation security measures, both operational and technical, whether applied directly by the federal government, the Airport Authority, or another person, including:
- (1) Records created or obtained for the purpose of training persons employed by, contracted with, or acting for the federal government, the Airport Authority, or another person, to carry out aviation transportation security measures required or recommended by Department of Homeland Security or Department of Transportation;
  - (2) Any list identifying systems or assets, whether physical or virtual, so vital to the aviation transportation system that

the incapacity or destruction of such assets would have a debilitating impact on transportation security.

- (aaa) ‘Solicit’ or ‘solicitation’ means to directly or indirectly, actively or passively, openly or subtly, ask or endeavor to obtain by asking, requesting, imploring, pleading for or trying to obtain.
- (bbb) ‘Standard Operating Procedure’ or ‘Airport Standard Operating Procedure’ means a written order, procedure or directive issued by the Director of Airports.
- (ccc) ‘Sterile Area’ means the enclosed concourse area of the Mid-Continent Airport commercial passenger terminal building used for passenger and airline crew boarding and de-boarding of commercial aircraft, and situated at and past the passenger security screening location that is subject to Transportation Security Administration security screening.
- (ddd) ‘Taxilane’ means any portion of the Airports authorized, designated and marked by the Airport Authority for the purpose of surface maneuvering of aircraft on portions of non-Movement Area aprons or ramps between taxiways and parking which are not under the jurisdiction and control of the ATCT.
- (eee) ‘Taxiway’ means those Movement Areas of the Airports designated and used for the sole and specific purpose of taxiing aircraft between aprons and runways.

(fff) ‘Traffic’ means pedestrians and vehicles, either singly or together, while using the Airports.

(ggg) ‘TSA’ means the Transportation Security Administration.

(hhh) ‘Weapon’ means a gun, knife, blackjack, slingshot, metal knuckles, any explosive device, or any other like instrument capable of being utilized to coerce, intimidate, slay, or injure any individual.”

**SECTION 2.** Section 9.35.020 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Emergencies.** The Director is hereby authorized and empowered to take such action as deemed necessary when an emergency exists on any Airport property, leased or unleased, which, in the Director’s judgment, presents an immediate threat to the health, security, safety or welfare of persons or property, to the operation of the Airports, or an immediate violation or potential violation of federal regulations exists or may exist if prompt and immediate action is not taken; provided, however, that in the exercise of such power the Director shall promptly notify the governmental agency(ies) having primary responsibility for the handling and resolution of such emergency, and provided further that the Director’s power herein granted shall cease upon the assumption of jurisdiction over such emergency by the governmental agency(ies) and such assumption of responsibility shall not be inconsistent with the requirements of any emergency procedure or program. No action shall knowingly be taken by the Director hereunder contrary to any regulation or order of the Federal Aviation

Administration, Transportation Security Administration, or of any other federal, state or local agency having appropriate jurisdiction.”

**SECTION 3.** Section 9.35.030 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Violations not exclusive.** Violations of this Code are in addition to any other violation enumerated within the ordinances of the Code of the City of Wichita, Kansas, or Standard Operating Procedures of the Airport Authority. This Code in no way limits the penalties, actions or procedures which may be taken by the City or Airport Authority for a violation of this Chapter, which is also a violation of any other ordinance of the City, statute of the State of Kansas or regulation of the Airport Authority. This Code is intended to supplement and be consistent with all federal rules, regulations and laws. Should a conflict exist between this Code and any rules and regulations of the Federal Aviation Administration (FAA), the Transportation Safety Administration (TSA) or other federal regulatory agency holding pre-emptive authority the federal rules and regulations shall control.”

**SECTION 4.** Section 9.35.040 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Enforcement.**

- (a) The Chief of Police and Police Officers of the City of Wichita Police Department, Chief of Airport Police and Fire, Airport Police and Fire Officers, and as specially authorized by this Chapter, ‘other authorized officers’ of the City of Wichita Airport

Department, are hereby authorized to enforce violations of this Chapter.

- (b) Violations of Title 11 and Title 5 of the Code of the City of Wichita, Kansas, occurring on Airport property may only be enforced by commissioned law enforcement officers of the City of Wichita.”

**SECTION 5.** Section 9.35.050 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Commercial activity.**

- (a) No person, unless authorized in writing by the Director or as permitted under the conditions of the *Minimum Standards for Aeronautical Activities and Services* policies, shall, in or upon any Airport property:

- (1) Engage in any business or commercial activity; or
- (2) Sell, offer for sale or advertise, any merchandise, food, beverage, services, products, or other service; or
- (3) Sell, offer for sale or advertise, any equipment, motor vehicle, or aircraft fuel products; or
- (4) Sell, offer for sale or advertise, any aircraft maintenance, parts, components, or services; or
- (5) Sell, offer for sale or advertise, any business or trade, including the air or ground transportation of persons, baggage, or goods; or



- (6) Install or place any coin, currency, debit or credit card operated machine for the sale, vending or provision of any merchandise, food, beverage or service of any type or kind; or
  - (7) Engage in any commercial aeronautical activity or services contrary to or in violation of the *Minimum Standards for Aeronautical Activities and Services* policies of Wichita Mid-Continent Airport as adopted by the Wichita Airport Authority Board on June 8, 2010, or as may be amended.
- (b) The following commercial activity shall be exempt from the requirements of this Section:
  - (1) Building and facility maintenance services when such services are provided and conducted on tenant leasehold property, required under lease agreement, and not requiring the application and issuance of a Building Permit as required under Title 18 of City Code; or
  - (2) FAA authorized pilot or maintenance examiners; or
  - (3) Independently employed contract pilots;
- (c) No person authorized by the Director to perform services or engage in commercial activity on the Airport property shall refuse to perform such services or other commercial activity when requested by any orderly person to do so, except as authorized by federal or state law or regulations.”

**SECTION 6.** Section 9.35.060 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Commercial liability insurance.**

- (a) No person shall engage in commercial activity on Airport property, whether authorized to engage in such commercial activity or not, without securing and maintaining, without interruption, a commercial liability insurance policy in the limit(s) and coverage(s) specified by the Director and naming the Wichita Airport Authority and City of Wichita as additional insured.
- (b) Proof of such insurance coverage in the form of a certificate shall be submitted to the Wichita Airport Authority.
- (c) Any person required by this Section to obtain and maintain liability insurance shall, within five days of any change, cancellation or termination of such insurance, notify the Director in writing of the change or modification of insurance coverage.
- (d) Insurance coverage shall not be cancelled or allowed to expire or lapse at anytime while engaged in commercial activity on Airport property.”

**SECTION 7.** Section 9.35.070 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Solicitation, Commercial Activity, Advertisements.**

- (a) No person shall:

- (1) Solicit contributions of money or other articles of value, for religious, charitable, political or any other purpose, and receive money or other articles of value, whether in the form of cash, checks, credit or debit vouchers or any other form of negotiable instrument in public areas.
- (2) Conduct or participate in any speechmaking, distributing of pamphlets, books or other written or graphic materials upon Airport property, without having delivered a written application to the Director requesting authorization to do so, and received a permit for the requested activity in accordance with Airport Standard Operating Procedures so that the Director may be fully informed of the activity proposed and take adequate precautions to protect the public health, safety and order, and to assure the efficient and orderly use of Airport property for its primary purpose and function, and to assure equal opportunity for the freedom of expression of others.
- (3) Conduct at or on any Airport so as to willfully deny to any person, employee or invitee on such premises, the lawful rights of such person, employee, or invitee to enter, to use the facilities, or to leave, any such public building;
- (4) Distribute, exhibit or post any signs, commercial handbills, circulars, leaflets or similar material on Airport property;

- (5) Deposit, distribute or discard any handbills, circulars, leaflets or similar material onto the Airports, Airport roads, rights-of-way, streets, sidewalks or other Airport property.
- (b) Distribution of noncommercial handbills, circulars, leaflets or similar material may be conducted only upon Airport public roads, rights-of-way, streets or sidewalks in accordance with Standard Operating Procedures.
- (c) The speech content of the activity shall not be a consideration in determining if a permit is issued.”

**SECTION 8.** Section 9.35.080 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Commercial photography, film, and recordings.**

- (a) No person, unless authorized by the Director, shall take still, motion, or sound motion pictures or sound recordings of voices for commercial training, educational, promotional, advertising, entertainment, or other commercial purposes, other than news coverage, in public areas of the commercial passenger terminal or other public areas of any facility under the administration of the Airport Authority.
- (b) Still, motion video, or live broadcast of facilities, systems, equipment or procedures are prohibited that are considered by the Director to be SSI or otherwise could or may compromise the safety or security of the traveling public.

Any person violating any provision of this Section of the Code is guilty of a misdemeanor and shall be punished by a fine of not more than five hundred dollars (\$500) and/or an imprisonment of not more than six (6) months and/or both such fine and imprisonment.”

**SECTION 9.** Section 9.35.090 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Lost Articles.** Any person finding lost articles on Airport property shall immediately deposit them with an authorized representative of the Airport Police and Fire Division. Articles unclaimed by the owner within six (6) months thereafter shall be, upon request, turned over to the finder, or otherwise be lawfully disposed of, in accordance with applicable law or Standard Operating Procedures. Nothing in this paragraph shall be construed to deny the right of Airport tenants to maintain ‘lost and found’ services for property of their passengers, invitees or employees. Articles to which the owner or finder is not entitled to lawful possession shall be forfeited to the Airport Authority for disposal in accordance with the provisions of applicable law and procedures of the Airport Authority.”

**SECTION 10.** Section 9.35.100 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Events.**

- (a) No person shall hold or stage an event on Airport property without prior written permission from the Director.

- (b) All pickets, protests, demonstrations, assemblies, political activity, informational leafleting or other events shall comply with all rules, regulations, and Airport Standard Operating Procedures adopted by the Director for such activities.
- (c) As a condition of authorization, the Airport Authority may require reimbursement for its costs of personnel, equipment, and/or supplies used in support of such activity, and may impose fair and reasonable rental rates for extended use of any space under the administration of the Airport Authority. In determining the appropriate amount of security for an event, the Director shall not consider the content of the applicant's speech, the measure of hostility likely to be created by the applicant's speech or the response of others who may oppose the event.”

**SECTION 11.** Section 9.35.110 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Weapons.**

- (a) No person, unless otherwise duly authorized by federal, state or local law to carry a weapon, other than law enforcement officers on duty or authorized and trained non-commissioned Airport employees and authorized and permitted contractors, shall carry, transport or conceal any firearm or other weapon on Airport property. The provisions of this Section shall not prohibit the carrying of an unloaded firearm, to be transported on a commercial

or general aviation aircraft, so long as the weapon is carried in and remains in a locked container.

- (b) No person shall discharge any firearm on Airport property, except in the performance of official duties requiring the discharge thereof, for purposes of wildlife hazard management, training, or in the lawful defense of life or property.

Any person violating any provision of this Section of the Code is guilty of a misdemeanor and shall be punished by a fine of not more than five hundred dollars (\$500) and/or an imprisonment of not more than six (6) months and/or both such fine and imprisonment.”

**SECTION 12.** Section 9.35.120 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Building construction and improvement.** No person, without written authorization from the Director, shall construct or cause to be constructed any buildings or structures, including signs, utility connections or any improvements, modifications (excluding maintenance and repair of a minor nature), re-model, or additions to any such buildings or structures, or any paving, excavations, removal of soil or fill material or other improvement to Airport property.”

**SECTION 13.** Section 9.35.130 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Payment of fees and charges.** The Director shall maintain a current schedule of fees and charges for the use of and access to any Airport property or facilities. Unless otherwise provided by agreement, no person shall use or access

any Airport property or facilities, except areas open for use by the general public and used for non-commercial purposes, without the payment of the prescribed fees and charges and obtaining applicable permits and/or use or lease agreement with the Airport Authority.”

**SECTION 14.** Section 9.35.140 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Interference with aircraft operations.** No person shall within the city limits of the City of Wichita direct, aim, throw, shoot, launch or propel any object, light or laser in such manner as to interfere with or endanger the safe operation of any vehicle, or of any aircraft approaching, landing at, taking off from, departing or operating to/from/upon an Airport.

Any person violating any provision of this Section of the Code is guilty of a misdemeanor and shall be punished by a fine of not more than five hundred dollars (\$500) and/or an imprisonment of not more than six (6) months and/or both such fine and imprisonment.”

**SECTION 15.** Section 9.35.150 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Airport parking facilities.**

- (a) No person shall enter or use an Airport motor vehicle parking facility, parking space or area, contrary to its posted or restricted use.
- (b) No person shall stop, park or leave a motor vehicle unattended in any Airport motor vehicle parking facility, parking space or area,



without having parked the vehicle in a designated stall or area in such a manner as to not obstruct the proper movement of other vehicles in the parking facility or area or utilization by other motor vehicles of driveways or adjacent parking spaces.

- (c) No person shall park or leave a motor vehicle in an Airport motor vehicle parking facility, open to the public, employees or invitees, without having secured a required vehicle parking permit, vehicle parking claim check or having paid the required parking fees.
- (d) No person shall remove or attempt to remove any motor vehicle from an Airport motor vehicle parking facility without making payment of the parking charge established and posted by the Airport Authority, unless authorized by the Director.
- (e) No person, unless authorized by the Director, shall remove or attempt to remove a vehicle parking claim check from an Airport motor vehicle parking facility claim check dispensing machine, other than as an operator or passenger of a motor vehicle entering an Airport motor vehicle parking facility, in which case, such person shall remove only one (1) claim check from the dispensing machine.
- (f) No person shall remove a claim check or checks from, or otherwise operate, an Airport motor vehicle parking facility claim check dispensing machine for the purpose of avoiding or enabling

another person to avoid payment of the charge for the use of the parking facilities.

- (g) No person shall remove or attempt to remove a motor vehicle from an Airport motor vehicle parking facility by presenting a claim check other than the claim check originally dispensed to the operator of such motor vehicle at the time that vehicle entered the parking facility.
- (h) No person shall present a parking claim check requiring payment of fees upon exiting a motor vehicle parking facility which does not indicate an accurate record of the length of time the motor vehicle was actually within the parking facility for which the time and charges have accrued.
- (i) No person, unless authorized by the Director, shall park or operate a motor vehicle on any Airport motor vehicle parking facility established or authorized for the use of persons employed at the Airport without complying with all procedures established by the Airport Authority for the control of such motor vehicle and for the use of such parking facility including payment of applicable fees and charges.
- (j) No person, unless authorized by the Director, shall enter such employee parking facilities or use the transportation service provided in support thereof unless possessing and displaying a

valid vehicle employee parking permit issued or approved by the Airport Authority.

- (k) No person shall loan, lend, sell, or otherwise permit the use of his or her vehicle employee parking permit and/or decal for use of any Airport public or employee parking facility or any employee transportation service.
- (l) No person, unless authorized by the Director, shall park vehicles carrying or transporting materials classified as hazardous, including biological, chemical, or physical in Airport motor vehicle parking facilities unless such materials are used for the operation of the vehicle.
- (m) The provisions of this Section may be enforced by any Airport Police and Fire Officer or other authorized officers of the City of Wichita Airport Department.”

**SECTION 16.** Section 9.35.160 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Commercial ground transportation.**

- (a) All persons or entities, including drivers, employees and representatives of a commercial ground transportation provider, using Airport roadways or operating motor vehicles upon Airport property shall comply with all Airport rules, regulations, ordinances of the City of Wichita, and Airport Standard Operating

Procedures adopted by the Airport Authority and/or the City of Wichita for such commercial ground transportation providers.

- (b) The provisions of this Section may be enforced by any Airport Police and Fire Officer or other authorized officers of the Airport Authority.
- (c) The Director may deny the use of the Airport to any ground transportation carrier and/or operator who violates Airport rules and regulations, ordinances of the City of Wichita or Airport Standard Operating Procedures, who fails to pay fees and charges, or fails to make arrangements to pay fees and charges.
- (d) The Director may deny the use of the Airports by any person, equipment, motor vehicle or aircraft if such use is reasonably determined to create a potential safety or security hazard. Examples of such hazards may include, but are not limited to, the transport of explosives, large quantities of combustible material, or hazardous material cargo.”

**SECTION 17.** Section 9.35.170 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Traffic, stopping, and parking of vehicles.** The Director is hereby authorized to designate such portions of the streets, roadways, and Airport property as, in his or her judgment, will be most compatible with the public interest and the use of all Airport property in regulating traffic and the stopping and parking of motor vehicles. Whenever any such zone or area is established, it

shall be appropriately designated and marked by painting on the curb or roadway or by a sign, or both, and when so designated or marked it is unlawful for any person to drive, stop or park or cause or permit to be driven, stopped or parked any motor vehicle contrary to such sign or marking.”

**SECTION 18.** Section 9.35.180 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Abandoned motor vehicles and equipment.**

- (a) No person shall abandon any motor vehicle or equipment on Airport property. Airport Police and Fire Officers or other law enforcement officers are authorized to remove or cause the removal, in accordance with applicable state and local regulations, of any abandoned motor vehicle or equipment. For the purposes of this Section, any motor vehicle or equipment, except one properly parked in an Airport motor vehicle parking facility, in a parking facility under the leasehold control of a tenant of the Airport Authority, or other area authorized by the Director, which shall have been left unattended for a period of forty-eight (48) hours or more shall be presumed to have been abandoned and may be considered and treated as abandoned.
- (b) Excluding parking facilities under the leasehold of an Airport tenant, no person shall park or store a motor vehicle or equipment in any Airport motor vehicle parking facility, or other area authorized for public or employee parking by the Airport

Authority, which shall have been left unattended upon the Airport for a period of thirty (30) days or more without prior notification given to the Director of Airports, his or her authorized representative, or an authorized parking management contractor.

- (c) No person shall park, store or leave a motor vehicle or equipment on Airport property which is wrecked, dismantled or inoperable, without the permission of the Director.
- (d) Vehicles and equipment which are subject to being towed and impounded pursuant to this subsection under conditions that do not constitute an immediate obstruction to the normal and safe movement of traffic or snow removal operations and are determined to be abandoned shall not be towed or impounded until upon the motor vehicle has been placed, on its windshield or in another prominent location, a sticker or placard indicating the vehicle is in violation of this Chapter and shall be removed after forty-eight (48) hours from the time the sticker or placard was attached to the vehicle. The sticker or placard shall include such other information as the Chief of Airport Police and Fire determines is necessary.
- (e) The provisions of Title 11 of this Code and state law will be complied with regarding the towing, impounding and disposition of motor vehicles towed pursuant to this Section.

- (f) Equipment removed shall be disposed of in accordance with the Standard Operating Procedures and policies of the Authority.
- (g) Motor vehicle(s) removed from Airport parking facilities shall be disposed of in accordance with the Standard Operating Procedures of the Authority.”

**SECTION 19.** Section 9.35.190 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Payment to avoid prosecution.** The owner or operator of any motor vehicle which is parked in violation of any of the provisions of this Chapter and to which a notice of violation has been issued by an officer authorized to enforce the provisions of this Chapter, may, within ten (10) days, pay to the Wichita Municipal Court a fine for and in full satisfaction of such violation, a sum as established by the municipal court judge. The failure of such owner or operator to make such payment within ten (10) days shall render such owner or operator subject to such additional penalties as set forth in Section 11.92.010 of the Code of the City of Wichita, Kansas.”

**SECTION 20.** Section 9.35.200 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Authority to close Airports or portions thereof.** The Director may close any Airport under the ownership, jurisdiction and control of the Wichita Airport Authority and any paved or unpaved surfaces thereon at any time and under any circumstances, whether leased or unleased, which is deemed by the Director to endanger persons or property.”

**SECTION 21.** Section 9.35.210 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Operation of gliders, glider towing, remote control, and other aeronautical devices.** The release, launch or operation of remote radio controlled aircraft, balloons, hot air balloons, kites, rockets, gliders/sailplanes, unmanned aerial vehicles, and the towing of banners at or from any Airport, Airport property, or property immediately adjacent to and bordering Airport property shall not be permitted without the prior written consent of the Director.

Any person violating any provision of this Section of the Code is guilty of a misdemeanor and shall be punished by a fine of not more than five hundred dollars (\$500) and/or an imprisonment of not more than six (6) months and/or both such fine and imprisonment.”

**SECTION 22.** Section 9.35.220 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Aircraft jet and propeller exhaust.** No aircraft shall be operated at any Airport or upon Airport property in any manner where the exhaust, jet ‘blast’ or propeller ‘blast’ may cause injury to person or persons or do damage to property. If it is impossible to operate such aircraft without compliance with the above, then the engine(s) must be shut off and the aircraft towed to the desired destination.”

**SECTION 23.** Section 9.35.230 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Taxiing or moving aircraft.** No aircraft shall be operated, including static engine run-up, at any Airport or upon Airport property unless a person



holding a valid, current, and appropriate airman's certificate, or a mechanic properly trained and qualified to operate and/or taxi that particular type of aircraft shall be attending the brakes and controls."

**SECTION 24.** Section 9.35.240 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**"Helicopters.** Helicopters shall not be started, operated, taxied, towed or otherwise moved on any Airport or upon Airport property with rotors turning unless there is a clear area of not less than fifty feet (50) from the outer tip of any main rotor. No helicopters shall be operated within two hundred (200) feet of any Airport or upon Airport property where unsecured light aircraft are parked. No helicopters shall be taxied on any Airport or upon Airport property by any person other than a person holding a valid, current, and appropriate airman's certificate for rotary-wing aircraft."

**SECTION 25.** Section 9.35.250 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**"Crossing roads or highways.** No aircraft shall be operated upon or across any public road or street on any Airport or upon Airport property under its own power without prior consent of the Director."

**SECTION 26.** Section 9.35.260 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**"Aircraft accidents and incidents.**

- (a) Any person operating an aircraft involved in an accident or incident as defined by 49 CFR 830 on Airport property which

results in loss of life or injury to any person, or damage to any property, shall immediately bring to a halt such aircraft at the scene of such accident or incident, or as close thereto as possible so as to minimize the obstruction of other aircraft operations. The person operating the aircraft shall comply with all applicable Federal Aviation Administration (FAA) and National Transportation Safety Board (NTSB) notification regulations, including verbal and written directives. Unless injured, such person shall remain at the scene of the accident or incident until federal reporting requirements have been accomplished.

- (b) Any person operating an aircraft involved in an accident or incident on Airport property, shall submit a report of such accident or incident to the Airport Police and Fire Division of the Airport Authority, including the names and addresses of the individuals involved, the description of the property and all aircraft involved, the registration and license number of all aircraft involved, names and addresses of any witnesses to the accident, and such other information relevant to the accident upon the request of any commissioned law enforcement officer of the Wichita Police Department or Airport Police and Fire Officer. The operator of any aircraft involved in such accident or incident shall, upon request of any commissioned law enforcement officer of the Wichita Police Department or Airport Police and Fire Division,

produce an airman's certificate, photo identification, aircraft registration, or other documents relevant to such accident or the persons or property involved to any law enforcement officer investigating the same.

- (c) The owner or operator of an aircraft involved in an accident or incident on Airport property shall not move such aircraft from the scene of the accident until authorized to do so by the appropriate federal agencies, law enforcement officers or Airport Police and Fire Officer.”
- (d) The operator of an aircraft involved in an accident or incident on Airport property shall, upon request of an appropriate federal agency, law enforcement officer or Airport Police and Fire Officer, submit to a test to indicate the alcohol concentration in the blood or breathe when:
  - (1) The law enforcement officer is authorized under state or local law to conduct such test or to have the test conducted; and
  - (2) The law enforcement officer is requesting submission to the test to investigate a suspected violation of state or local law.
- (e) Such test results shall be released to the Federal Aviation Administration and National Transportation Safety Board upon request.

- (f) Any person violating any provision of this Section of the Code is guilty of a misdemeanor and shall be punished by a fine of not more than five hundred dollars (\$500) and/or an imprisonment of not more than six (6) months and/or both such fine and imprisonment.”

**SECTION 27.** Section 9.35.270 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Removal of disabled aircraft.**

- (a) Aircraft owners and/or operators involved in an accident or incident on Airport property shall be responsible for the prompt removal of disabled aircraft and parts thereof, unless required or directed to delay or postpone such removal by the Director, an Airport Police and Fire Officer, or an authorized representative of a federal agency.
- (b) When a disabled aircraft is blocking, delaying, or precluding the use of any portion of the AOA, the owner and/or operator of the aircraft shall take all reasonable actions to remove such aircraft, or make arrangements for removal as soon as directed or authorized to do so by the Director or an Airport Police and Fire Officer, and in concurrence with jurisdictional governmental agencies. In the event that removal of such disabled aircraft and parts thereof are not initiated as soon as possible, or is not progressing at a rate acceptable to the Director or his/her authorized designee, then the

Airport Authority shall have the right to cause the removal of the aircraft at the sole expense and risk of the owner, and without liability to the Airport Authority.”

**SECTION 28.** Section 9.35.280 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Denial of use.**

- (a) The Director, following written notice, may deny the use of Airport property to any aircraft owner and/or operator, tenant, tenant employee, contractor, or other person who knowingly violates Airport rules, regulations, and Standard Operating Procedures, fails to pay fees and charges, or fails to make arrangements to pay fees and charges.
- (b) The Director may deny the use of Airport property if such use is reasonably determined to create a potential safety or security risk, hazard or a potential violation of federal regulations.”

**SECTION 29.** Section 9.35.290 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Aircraft parking.** No person shall park an aircraft or leave the same standing on a runway, taxiway, ramp and apron area, public aircraft parking and storage or operational area on any Airport property except at such places as may be identified and permitted by the Director. When parked in such permitted areas, light aircraft of less than 5,000 pounds gross takeoff weight shall be properly and correctly tethered to the ground or otherwise secured in a safe and proper manner.

The main landing wheels of heavy aircraft weighing at or in excess of 5,000 pounds gross takeoff weight shall be chocked with wheel blocks or other approved devices, except in cases where, in the opinion of the Director, proven procedures may be equally effective to secure the aircraft in a safe and proper manner. Helicopters shall have braking devices and/or rotor mooring blocks applied to the rotor blades.”

**SECTION 30.** Section 9.35.300 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Preservation of property.** No person shall, unless authorized by the Director:

- (a) Destroy, injure, deface, disturb, or tamper with any building, sign, equipment, fixture, marker, or any other structure or property on Airport property;
- (b) Injure, deface, remove, destroy, or disturb the trees, flowers, shrubs, or other vegetation on Airport property;
- (c) Walk, drive or park on a posted lawn or seeded area of any Airport property; or
- (d) Willfully abandon any personal property on Airport property.”

**SECTION 31.** Section 9.35.310 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Portable Storage Containers and Structures.**

- (a) Unless specifically approved in writing, and under conditions specified by the Director, no person shall place, or allow to be

placed, upon Airport property any type of portable storage container, temporary structure, trailer, mobile home, unit, box, barrel, modular structure or device which is used to store merchandise and/or equipment and supplies outside of an enclosed permanent building or structure, which does not qualify as a building or structure under Title 18 of the Code of the City of Wichita, Kansas.

- (b) The Director will not withhold approval of such container(s) and structure(s), for a reasonable duration of time, if such is of a temporary nature for the purpose of supporting construction, alteration or improvement activity, or other approved project.”

**SECTION 32.** Section 9.35.320 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Interference with Airport operations.**

- (a) No person shall conduct any operation or engage in any activity on Airport property, nor permit the conduct of any activity, which shall materially or adversely affect the development, improvement, operation, or maintenance of the Airports or facilities thereupon.
- (b) No person shall use or permit to be used in any manner any operation or activity which might interfere with the landing and take-off of aircraft from the Airports or otherwise constitute a safety or security hazard to the general public, or to tenants or the customers, agents, invitees, contractors, representatives, and

employees of those tenants. The Director reserves the right to enter upon any Airport property, whether leased or unleased, and cause the abatement of such interference.

- (c) No person shall allow any condition on Airport property, nor permit the conduct of any activity, which shall materially or adversely affect, infringe upon, block or interrupt the operations and business activity of other Airport tenants, customers, agents, invitees or employees.

Any person violating any provision of this Section of the Code is guilty of a misdemeanor and shall be punished by a fine of not more than five hundred dollars (\$500) and/or an imprisonment of not more than six (6) months and/or both such fine and imprisonment.”

**SECTION 33.** Section 9.35.330 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Snow and ice removal.**

- (a) No person shall pile, deposit, move, remove or displace snow, snow piles, windrows or other accumulations of frozen precipitation in such a fashion or manner as to:
  - (1) Be no closer than twenty five feet from any security fence;
  - (2) Block any access gates or controls;
  - (3) Block or impede any taxiway or taxi lane;
  - (4) Impose an obstruction within the object free area (OFA) of any taxiway or taxi lane; or



- (5) Infringe upon, block or interrupt the business of an Airport tenant leasehold.
- (b) Snow piles and accumulations requiring removal shall be stored on pre-approved/arranged paved or non-paved areas.
- (c) Only FAA approved dry and liquid chemicals may be used for de-icing or snow removal on air-side paved surfaces (parking ramps, taxiways, runways), as set forth in Advisory Circular 150/5200-30, current edition, or as may be amended, *Airport Winter Operations and Safety*, Section 4-6 *Approved Chemicals*, current edition, or as may be amended.
- (d) The use of snow and ice removal contractors may be authorized, with prior written approval by the Director, subject to acceptable completion of contractor employee training, maintenance of a general liability insurance policy and other reasonable safety requirements and standards as the Airport Authority may impose. Such requirements may include, but are not limited to, securing and maintaining a general liability insurance policy in limits acceptable to the Director and naming the Wichita Airport Authority and the City of Wichita as additional insured.”

**SECTION 34.** Section 9.35.340 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Protection of airspace.**

(a) In the event future construction of a building, structure, or attachment thereto is planned on Airport property, or in the event of any planned modification or alteration of any present or future building or structure situated on Airport property, all persons shall comply with the notification, review and approval requirements contained in 14 CFR Part 77 of the Federal Aviation Regulations, and Chapter 28.08 of the Code of the City of Wichita, Kansas. No person shall erect nor permit the erection of any structure or object, nor permit the growth of any tree on the Airport property which will exceed such maximum height as may be stipulated by the Airport Authority. Applicable federal, state and/or local laws, codes, regulations or directives concerning height restrictions shall govern the maximum allowed height. In the event any person fails to promptly comply with this Section, the Director, after notice to such person, shall have the right to enter upon any Airport property and to remove the offending tree, structure or object.

(b) Any person violating any provision of this Section of the Code is guilty of a misdemeanor and shall be punished by a fine of not more than five hundred dollars (\$500) and/or an imprisonment of not more than six (6) months and/or both such fine and imprisonment.”

**SECTION 35.** Section 9.35.350 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Entry to the Secured Area, Air Operations Area (AOA), Security Identification Display Area (SIDA), or Sterile Area.** No person shall enter the Secured Area, AOA, SIDA or Sterile Area of Mid-Continent Airport except:

- (a) Persons who enter in accordance with security clearance pursuant to the TSA approved Airport Security Plan established or authorized by the Airport Authority; or
- (b) Persons assigned duties on the Secured Area, AOA, SIDA or other Restricted Areas of Mid-Continent Airport bearing proper identification as approved and required herein.
- (c) The provisions of this Section are enforceable by the Chief of Police, any law enforcement officer, Chief of Airport Police and Fire, Airport Police and Fire Officers and ‘other authorized officers’ of the Airport Authority.
- (d) Any person violating any provision of this Section of the Code is guilty of a misdemeanor and shall be punished by a fine of not more than five hundred dollars (\$500) and/or an imprisonment of not more than six (6) months and/or both such fine and imprisonment.”

**SECTION 36.** Section 9.35.360 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Vehicle Entry to and movement on the Secured Area, Air Operations Area (AOA), Security Identification Display Area (SIDA), or Sterile Area.**

(a) No person shall enter or operate a motor vehicle or equipment upon the Secured Area, AOA, SIDA or Sterile Area of Mid-Continent Airport except:

- (1) Pursuant to the TSA approved Airport Safety Program established or authorized by the Airport Authority; and
- (2) Authorized persons with assigned duties requiring the operation of motor vehicles upon the Secured Area, AOA, SIDA or other Restricted Areas of Mid-Continent Airport, and the motor vehicle bearing a Vehicle Ramp Permit as approved and required herein; or
- (3) Authorized persons with assigned duties requiring operating motor vehicles or equipment upon the Secured Area, AOA, SIDA or other Restricted Areas of Mid-Continent Airport and the motor vehicle bearing a permanent company/agency name and/or logo identifying such vehicle as the property of an Airport tenant or operator as approved and required herein;
- (4) Authorized persons with assigned duties requiring operating motor vehicles upon the Secured Area or SIDA

of Mid-Continent Airport and not operating a motor vehicle owned by and marked as an Airport tenant or operator shall be subject to and shall consent to a motor vehicle security inspection prior to entering the Secured Area or SIDA;

- (b) The provisions of this Section are enforceable by the Chief of Police, any law enforcement officer, Chief of Airport Police and Fire, Airport Police and Fire Officers and ‘other authorized officers’ of the Airport Authority.”

**SECTION 37.** Section 9.35.370 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Use and enjoyment of Airport premises.** No person(s) singly or in association with others shall by his or her conduct or by congregating with others obstruct, delay or unreasonably interfere with any other person or persons from the use and enjoyment of the Airports and its facilities or any Airport property, or seek to obstruct, delay, or unreasonably interfere with other person or persons from passage from place to place, or through entrances, exits or passageways on the Airports or Airport property.”

**SECTION 38.** Section 9.35.380 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Sanitation.**

- (a) No person shall dispose of garbage, papers, refuse, waste or other forms of trash, including grass clippings, brush and tree limbs,

construction debris, cigarettes, cigars or matches on Airport property, except in receptacles provided for such purpose.

- (b) No person shall dump or dispose of any fill, construction, demolition or building material or any other material on Airport property, or in any canal or drainage ditch serving the Airports, except with prior approval of the Director, and in such area and under such conditions as are specifically designated.”

**SECTION 39.** Section 9.35.390 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Animals.**

- (a) No person, other than a person with a disability accompanied by a service animal, or a trained dog used for law enforcement purposes and under the control of an authorized law enforcement officer, shall enter the Mid-Continent Airport commercial passenger terminal with an animal, unless such animal is to be or has been transported by air and is kept confined in a carriage device or cage so as to be completely under control and not pose a safety risk to other persons.
- (b) Except for animals that are to be or have been transported by air, or are properly confined or restrained as required under this Section, no person shall permit any animal under his or her control or custody to enter Airport property.

- (c) A service animal is one that performs a function or task for a person with a disability that such person cannot personally perform. The handler is solely responsible for the care, feeding and control of the service animal.
- (d) A service animal shall have a harness, leash, or other tether, unless either the handler is unable because of a disability to use a harness, leash, or other tether, or the use of a harness, leash, or other tether would interfere with the service animal's safe, effective performance of work or tasks, in which case the service animal must be otherwise under the handler's control (*e.g.*, voice control, signals, or other effective means).
- (e) A service animal may be removed from the Mid-Continent Airport commercial passenger terminal if:
  - (1) The animal is out of control and the animal's handler does not take effective action to control it; or
  - (2) The animal is not housebroken.
- (f) If a service animal is excluded from the Mid-Continent Airport commercial passenger terminal, the person with a disability shall be given the opportunity to participate in the service, program, or activity without having the service animal on the premises.
- (g) No person, other than officials acting pursuant to proper authority for purposes of wildlife or other animal hazard management shall

hunt, pursue, trap, catch, injure, or kill any animal on Airport property.

- (h) No person shall ride horse-back on Airport property without prior authorization of the Director.
- (i) No person shall permit, either willfully or through failure to exercise due care or control, any animal to urinate or defecate upon the sidewalks of the Airports or upon the floor of the commercial passenger terminal or any other building used in common by the public on Airport property.
- (j) No person shall feed or conduct any other action to encourage the habitation or congregation of birds or other wildlife on Airport property.”

**SECTION 40.** Section 9.35.400 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Foreign objects on AOA.**

- (a) The presence of foreign objects on any portion of the AOA presents a significant safety issue for aircraft, aircraft engines and persons and property. Foreign objects include natural or manmade items, trash, debris, plastic or metal items or pieces thereof, which may cause damage to aircraft engines or hulls either through intake of an engine, by reason of propeller or jet engine exhaust created by the engine, or else being wind-blown into an engine or against an aircraft hull.



- (b) No person shall, either willfully or through failure to exercise due care or control, deposit, or cause to be placed or deposited on any area of the AOA, or on any leasehold area in close proximity to or adjoining the AOA, any foreign object defined in subsection (a).”

**SECTION 41.** Section 9.35.410 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“False reports or threats.** No person shall make any physical, verbal or written threat involving aircraft, Airport facilities or operations at any Airport, or make a false report regarding the conduct of operations at or use of any Airport.

Any person violating any provision of this Section of the Code is guilty of a misdemeanor and shall be punished by a fine of not more than five hundred dollars (\$500) and/or an imprisonment of not more than six (6) months and/or both such fine and imprisonment.”

**SECTION 42.** Section 9.35.420 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Airport Access and Identification Media.**

- (a) Those persons authorized to enter the Secured Area, AOA, SIDA, Sterile Area or other Restricted Areas at Mid-Continent Airport in accordance with the provisions of this Section shall at all times possess an official access and identification media (ID media) issued and approved by the Airport Authority. ID media shall be worn and displayed conspicuously on the outer garment of the

person, in plain view above the waist, unless otherwise authorized by the Airport Authority.

- (b) In the event ID media issued by the Airport Authority is damaged, lost or stolen, the company which employs or sponsors the person to which such identification was issued shall comply with procedures established by the Airport Authority and give immediate notice of such occurrence to the Airport Police and Fire Division. A replacement ID media shall not be reissued until such notice is received by the Airport Police and Fire Division and either the employee or the employer has paid to the Airport Authority the established fee for the issuance of replacement Airport ID media.
- (c) All persons issued ID media by the Airport Authority, or the company employing or sponsoring such persons, shall pay to the Airport Authority the established fee for the issuance of original, renewal or replacement Airport security ID media. The company employing or sponsoring persons holding ID media shall be responsible for the immediate return of the ID media of any employees or sponsored persons who have separated or transferred from their employment at the Airport, or whose ID media has been demanded by the Airport Authority, and for paying to the Airport Authority the established fee for the failure to return the ID media of the employees or sponsored persons.

- (d) No person issued ID media by the Airport Authority for the purpose of entering a Secured Area, AOA, SIDA, Sterile Area or other Restricted Areas at Mid-Continent Airport or any other Airport shall loan or transfer such ID media to any other person or use ID media for personal purposes.
- (e) No person shall enter a Secured Area, AOA, SIDA, Sterile Area or other Restricted Areas at Mid-Continent Airport or any other Airport without possessing the appropriate color zone identification badge authorization for such access, unless otherwise specifically approved by the Airport Authority.
- (f) No person shall enter a Secured Area, AOA, SIDA, Sterile Area or other Restricted Areas at Mid-Continent Airport or any other Airport using ID media issued to any other person. In the event a person is discovered wearing the access and identification media of another person, unless such other person has previously reported that his or her access and identification media has been lost or stolen, both persons shall be considered to have violated the provisions of this Section.
- (g) It shall be the responsibility of all persons working in a Secured Area, AOA, SIDA, Sterile Area or other Restricted Areas at Mid-Continent Airport to ensure that all other persons approached within fifty (50) feet are properly displaying an appropriate Airport access and identification media at all times, in accordance with this

Section. The failure of an authorized ID media holder to issue proper and appropriate security challenge to persons in a Secured Area, AOA, SIDA, Sterile Area or other Restricted Area who are not visibly displaying ID media shall be deemed in violation of this Section. A proper and appropriate security challenge shall be issued as defined in this Chapter. Persons found to be without current, correct and appropriate ID media or in an unauthorized area shall be immediately escorted from the area into a non-secured public area, and kept under visual observation until clear of the Secured Area, AOA, SIDA or Sterile Area and the challenging party shall immediately notify Airport Police and Fire. When a verbal challenge is not made due to fear or concern for personal safety, the location, name (if known), employer (if known) and physical description of the person must be immediately communicated to the Airport Police and Fire Division.

- (h) Airport access and identification media issued by the Authority shall at all times remain the property of the Airport Authority. The Airport Authority shall have the right to confiscate the ID media of any person who violates the provisions of this Section, and to demand the return of the ID media of all persons employed or sponsored by a company violating this Section or whose lease, permit or license agreement with the Airport Authority allowing

use of the Airport has expired, been cancelled or terminated. The Authority shall have the right to demand the return of and confiscate Airport Authority issued access and identification media for any violation by any person of Transportation Security Regulations, Security Directives, or the TSA approved Airport Security Plan.

(i) The following shall be exempt from the requirements of this Section:

- (1) FAA Safety Inspectors authorized to carry and exercise the authority of FAA Form 110A credentials while conducting and discharging their official duties; or
- (2) Transient pilots, flight crews, and cabin crews while moving in the immediate vicinity of the aircraft for which they are operating, and between the points of the aircraft and flight crew operations, flight office, airline operations office, fixed-base operation or equivalent and points immediately in-between; or
- (3) Aircraft passengers while moving in the immediate vicinity of the aircraft, and between the aircraft and the terminal boarding/de-boarding points, fixed-base operation or equivalent and points immediately in-between.”

**SECTION 43.** Section 9.35.430 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Security devices.** No unauthorized person shall remove, tamper, alter, interfere with, damage, destroy or impair a camera, lock, security mechanism or access control system of any door or gate at any Airport leading to a Secured Area, AOA, SIDA, Sterile Area or other Restricted Area that is not within a tenant exclusive leasehold and for which the Airport Authority has direct control.”

**SECTION 44.** Section 9.35.440 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Consent to inspection.** Any motor vehicle and the contents thereof, entering or operating upon a Secured Area, AOA, SIDA, Sterile Area or other Restricted Area, shall be subject to inspection by law enforcement officers and other authorized officers for the purposes of determining ownership of such motor vehicle and the contents thereof, and for examining the documentation relating thereto. The operation or use of a motor vehicle by any person into, from or within the Secured Area, AOA, SIDA, Sterile Area or other Restricted Area of the Airport shall constitute the consent of the owner, operator and/or user of such vehicle for such inspection.”

**SECTION 45.** Section 9.35.450 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Inspections.**

- (a) No person shall enter the Secured Area, AOA, SIDA, Sterile Area or other Restricted Area of the Airport, except persons who enter pursuant to Section 9.35.420 of the Code of the City of Wichita, Kansas, bearing the proper identification as authorized by the TSA in the Airport Security Program.
- (b) No person entering or attempting to enter, operating upon, or departing from or attempting to depart the Secured Area, AOA, SIDA, Sterile Area or other Restricted Area of the Airport, shall refuse to produce for inspection at the request of law enforcement officers and other authorized officers, any access and identification media, or the contents, or both, of any vehicle, bag, case, parcel, box or container of any kind in his or her possession.
- (c) Where the entry into or departure from the Restricted Area is by means of a motor vehicle, no person shall refuse to produce for inspection, after such request, a driver’s license, proof of insurance, and an Airport issued vehicle ramp permit.
- (d) No person shall refuse to produce, at the request of law enforcement officers and other authorized officers any document in his or her possession relating to the ownership or possession of

cargo or freight upon entering, leaving or being within the Secured Area, AOA, SIDA, Sterile Area or other Restricted Area.

- (e) No person entering or attempting to enter, operating upon, or departing from or attempting to depart the Secured Area, AOA, SIDA, Sterile Area or other Restricted Area of the Airport shall have in his or her vehicle or personal possession any weapon, explosives or explosive device unless such person is a law enforcement officer or other authorized officer permitted to be in possession of such items and such items are required in the performance of official Airport duties.”

**SECTION 46.** Section 9.35.460 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Protection of leased areas.**

- (a) No Airport tenant under whose leased premises and control are any motor vehicle or personnel gates, doors or any other means of ingress and egress to a Secured Area, AOA, SIDA, Sterile Area or other Restricted Area shall fail to keep the same secured or controlled at all times to prevent the access of unauthorized persons.
- (b) Airport tenants shall be responsible for the control and prevention of unauthorized access through their leased premises to a Secured Area, AOA, SIDA, Sterile Area or other Restricted Area.



- (c) No Airport tenant under whose control any motor vehicle or personnel gates, doors or other means of ingress or egress to or from a Secured Area, AOA, SIDA, Sterile Area or other Restricted Area shall fail at all times to have in effect security access control procedures meeting the requirements of the Airport's security program. In no event shall tenant-controlled keys, lock combinations, proximity cards or the like be issued or permitted to be issued to non-employees and persons without an operational need and necessity for such keys, combinations or cards.
- (d) Airport tenants under whose leased premises and control are any motor vehicle or personnel gates, doors or any other means of ingress and egress to a Secured Area, AOA, SIDA, Sterile Area or other Restricted Area shall, at all times, maintain an accurate record and accounting of persons to whom keys, lock combinations, proximity cards or the like have been issued. Upon the demand of an Airport Police and Fire Officer or other authorized officer of the Airport Authority, such Airport tenants shall provide reasonable documented proof of compliance with this subsection.

Any person violating any provision of this Section of the Code is guilty of a misdemeanor and shall be punished by a fine of not more than five hundred dollars (\$500) and/or an imprisonment of not more than six (6) months and/or both such fine and imprisonment.”

**SECTION 47.** Section 9.35.470 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Security Sensitive Information.**

- (a) No person, who has obtained details of an account of airplane piracy as a consequence of his or her official duties, shall divulge such information to persons other than those with an operational need and necessity to know, including:
  - (1) Information about the incident or efforts to resolve the incident, the disclosure of which may jeopardize the safety of persons involved;
  - (2) Information identified by officials of an agency of the U.S. Government as techniques and procedures used for resolving acts of airplane piracy and interference with aviation operations, the disclosure of which is likely to jeopardize the safety of international civil aviation.
- (b) No person, who may have knowledge, information or documentation of information defined as SSI herein, or as defined by TSR 1520.5, may knowingly share, convey, transfer, distribute, or transmit such information to persons without proper security clearance and without an operational need and necessity to possess such information.

Any person violating any provision of this Section of the Code is guilty of a misdemeanor and shall be punished by a fine of not more than

five hundred dollars (\$500) and/or an imprisonment of not more than six (6) months and/or both such fine and imprisonment.”

**SECTION 48.** Section 9.35.480 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Storage of property.**

- (a) Unless otherwise provided in a lease or other written agreement or permit, no person shall use any area of the Airports for storage of cargo, aircraft, vehicles, motor vehicles, mobile equipment, boats, recreational vehicles, campers, motorcycles, all terrain vehicles, or other property without prior permission of the Director. If persons use such areas for storage without first obtaining permission, the Airport Authority shall have such property removed from Airport property and stored at the expense of the owner or consignee thereof.
- (b) No person shall load cargo on or unload cargo from an aircraft, other than in designated areas established by the Director, or in areas contained within an established leasehold for such activity.”

**SECTION 49.** Section 9.35.490 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Handling and disposal of sanitary waste from Aircraft.**

- (a) Sanitary waste removed from an aircraft shall be securely enclosed or covered while being transported to a legally permitted facility

designed and designated for emptying and processing of such waste.

- (b) The sanitary waste accumulated in the fixed waste retention tank on an aircraft shall be discharged through a flexible hose, with a watertight connection to a portable water-tight tank to avoid contamination of the surrounding area. Flushing of the retention tank shall not be accomplished by direct connection to any potable water distribution system.
- (c) All connections in an aircraft sanitary waste discharge line or sanitary tank servicing equipment shall be equipped with positive seals to prevent spillage.
- (d) All sanitary waste shall be properly disposed of in accordance with federal, state, and local laws, codes, and regulations. Sanitary waste shall not be disposed of or introduced into any sanitary or storm water system of the Airport, or onto Airport property including interior or exterior drains or plumbing fixtures or receptacles, except in a manner approved by the Airport Authority and meeting the requirements of all federal, state, and local environmental and health codes.”

**SECTION 50.** Section 9.35.500 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Smoking and other sources of open flame.** Smoking or carrying of cigarettes, cigars, pipes, striking of matches, operation of open flame lighters or other sources of open flame or ignition is prohibited:

- (a) Within 100 feet of any aircraft; and
- (b) Within 100 feet of any fuel storage facility, fuel storage tank, refueling vehicle, refueling station or Wichita Airport Authority owned storage building, facility or location containing flammable liquids or gasses; and
- (c) Within 100 feet of the site of any flammable liquid spill; and
- (d) On any aircraft parking ramp.”

**SECTION 51.** Section 9.35.510 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Open-flame operations.** No person shall conduct an open-flame operation in any area on Airport property, including but not limited to cutting, welding or other maintenance or construction activity, unless specifically permitted by the Airport Police and Fire Division. Any such activities, if authorized, shall be conducted in strict accordance with NFPA standards, and Airport Standard Operating Procedures.”

**SECTION 52.** Section 9.35.520 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Storage of material.**

- (a) No person shall keep, store or maintain material or equipment in such type or manner as to constitute a fire hazard or be in violation of applicable state and municipal fire codes, NFPA standards or the Standard Operating Procedures.
- (b) All storage material in buildings shall be arranged in height not to extend above the lower or bottom cord of roof trusses and shall not be closer than eighteen (18) inches below sprinkler heads. Storage areas shall provide aisles adequate for passage of fire department personnel and equipment throughout the area and between such storage areas and all outside walls.”

**SECTION 53.** Section 9.35.530 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Storage, handling, and records of hazardous material.**

- (a) No person shall keep, store or maintain any flammable liquids, gases, explosives, signal flares, pyrotechnics, or other hazardous material on Airport property, except in containers and receptacles, and in structures or areas, specifically approved for such storage, in compliance with the requirements of NFPA standards, Federal Aviation Regulation, and federal, state and local fire and environmental codes.

- (b) No person shall keep, store or maintain any hazardous material, including but not limited to, flammable liquids, gasses, explosives, signal flares, or pyrotechnics, in quantities greater than ten (10) gallons, or thirty (30) pounds without notifying the Airport Police and Fire Division and identifying the type, quantity, location and container marking/identification of such material. Hazardous materials defined as ‘acutely’ hazardous, regardless of quantity or volume, shall be reported.
- (c) Notification shall be made to the Airport Police and Fire Division no later than fourteen (14) days following any addition of material quantity, change in material type, or change of material location.
- (d) The Director or his authorized designee(s) shall have the right to enter upon any Airport property, whether leased or unleased, for the purpose of inspecting and verifying the type, quantity, and location of hazardous materials.”

**SECTION 54.** Section 9.35.540 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Cleaning fluids.**

- (a) No person shall use flammable substances for cleaning hangars or other buildings on Airport property.
- (b) No person shall store flammable cleaning fluids on Airport property, except in containers with dispensing devices approved by

NFPA standards and applicable federal, state, and local fire and environmental codes.

- (c) No person shall transport flammable cleaning fluids on Airport property except in safety containers approved by NFPA standards and applicable federal, state, and local fire and environmental codes.”

**SECTION 55.** Section 9.35.550 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Leasehold cleanliness.** All Airport tenants shall keep all interior and exterior areas of the premises leased or used by them clean and free of oil, grease, and other flammable material. The floors of hangars and other buildings shall be kept clean and continuously kept free of rags, waste material or other flammable trash or debris.”

**SECTION 56.** Section 9.35.560 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Operating aircraft engines in hangars.** No person shall start or operate an aircraft engine, including on-board auxiliary power units (APU’s), inside any hangar, other than the short duration starter rotation of jet engines without ignition.”



**SECTION 57.** Section 9.35.570 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Classified Explosives, corrosives, poisons, compressed gases, and radiological materials.**

- (a) No person shall store, keep, maintain, handle, use, dispense or transport at, to or from an Airport, any Class A explosive (as defined by the ‘Hazardous Material Regulation of the Department of Transportation’) without the prior approval of the Director.
- (b) No person shall store, keep, maintain, handle, use, dispense or transport at, to or from the Airports any Class B or Class C explosive, Class A poison, or red label materials (as defined by the ‘Hazardous Material Regulation of the Department of Transportation’) in a manner other than in conformity with the applicable regulations of the Air Transport Association of America, the International Air Transport Association, the United States Department of Transportation, and the recommendations of the National Fire Protection Association.
- (c) Other than for purposes approved by Federal Aviation Regulations (FARs), no person shall carry a compressed air or gas tank aboard a commercial aircraft, unless such tank is reduced to zero pressure, or is an integral component of the aircraft system.

Any person violating any provision of this Section of the Code is guilty of a misdemeanor and shall be punished by a fine of not more than five hundred

dollars (\$500) and/or an imprisonment of not more than six (6) months and/or both such fine and imprisonment.”

**SECTION 58.** Section 9.35.580 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Fueling and defueling.**

- (a) No person shall fuel or defuel an aircraft while an engine of such aircraft is running. Fueling or defueling of an aircraft is not prohibited during aircraft APU operations, or when an operating jet engine is mounted at the rear of the aircraft or on the wing on the side opposite the fueling point. A single engine may be operated to provide aircraft electrical power during fueling, provided such operations are conducted in accordance with the aircraft manufacturer’s recommended procedures manual, are not contrary to the manufacturer’s published aircraft limitations, and are not in violation of NFPA or ATA standards.
- (b) All handling, maintenance, and storage of hazardous substances and materials by commercial fuel service providers, who provide fuel services to commercial airlines on Mid-Continent Airport, shall comply with the requirements of 14 CFR Part 139, Sub Part 321 as currently published, or as may be amended, changed, revised, and promulgated by the Federal Aviation Administration, the procedures for which is specifically set forth under the

approved Airport Certification Manual, and ATA Spec 103 as currently published or as may be amended, changed or revised.

- (c) In accordance with NFPA standards, no person shall place into operation any electrical appliance within fifty (50) feet of an aircraft when the aircraft is being fueled or defueled.
- (d) No aircraft shall be fueled or defueled unless the aircraft and the fuel dispensing apparatus shall both be electrically grounded or bonded as required by FAR and NFPA standards.
- (e) When a fuel spill of any quantity occurs, fueling operations shall immediately cease and the Airport Police and Fire Division shall be notified immediately, and if necessary and practical, shut-off valves shall be shut down. If the engine of the fueling vehicle is running at the time of the fuel spill, the vehicle shall be removed from the area unless contrary orders are issued by the senior Airport Police and Fire Officer at the scene. If the engine of a fueling vehicle is shut down at the time of the fuel spill, it shall remain shut down unless a fire has already started or until the senior Airport Police and Fire Officer at the scene authorizes or orders the vehicle moved. In no event shall fueling or defueling operations resume following a fuel spill until all areas upon which fuel has spilled or flowed over are contained and removed, and the senior Airport Police and Fire Officer at the spill site has issued an order permitting the resumption of fueling operations. The fueling

agent or owner of the mobile fueling vehicle or static fueling device involved in an accidental fuel release shall be responsible for all costs associated with the clean-up, removal, remediation and lawful disposal of fuel, soils, and absorbent material as required by state or federal law.

- (f) No passenger shall be permitted in any aircraft during fueling or defueling, unless a cabin attendant is present at or near the cabin door and a passenger boarding ramp or bridge is in place at the cabin door, and in accordance with ATA and NFPA standards.
- (g) No person shall use any material within fifty (50) feet of the nearest point of an aircraft during fueling or defueling of the aircraft which may cause a static spark.
- (h) No person shall engage in aircraft fueling and defueling operations without adequate fire extinguisher devices as recommended by NFPA and as required by FARs.
- (i) No person shall start the engine of any aircraft when there is flammable liquid on the ground in the vicinity of such aircraft.
- (j) No person shall fuel or defuel an aircraft with fueling hoses and other equipment or apparatus which are not in safe and serviceable condition in accordance with NFPA standards and FARs.
- (k) All hoses, funnels, and appurtenances used in fueling and defueling operations shall be equipped with a positive grounding

device in good order to prevent ignition of flammable liquids due to static spark.

- (l) The fueling and defueling of aircraft shall be conducted at a distance of no less than fifty (50) feet from any building or structure unless at the commercial passenger terminal building aircraft loading/unloading gate, or fifty (50) feet from any combustion or ventilation air intake to any boiler, heater, or incinerator room in accordance with NFPA standards.
- (m) Maintenance and testing of fuel storage, distribution, and delivery systems shall be conducted under controlled conditions, in strict compliance with NFPA 410(C) or subsequent replacement publications.
- (n) Refueling vehicles shall be stored and maintained outdoors in areas authorized by the Airport Authority, except for minor adjustments or repairs necessary to move such units to the storage area. No fuel trucks, empty or otherwise, shall be brought into, kept or stored within any building or enclosed structure at an Airport, unless with prior notification and under such conditions as approved by the Airport Police and Fire Division.
- (o) If a fire occurs in or near a fuel delivery device while servicing an aircraft, the Airport Police and Fire Division shall be notified immediately, fueling shall be discontinued immediately, emergency valves shall be shut down at once, and the fueling

vehicles and equipment shall immediately be removed from the vicinity of the aircraft unless deemed unsafe to do so. Persons on board the aircraft shall be evacuated and other equipment removed from the area unless deemed unsafe to do so. Unless deemed unsafe to do so, the aircraft shall be towed to a position at a safe distance from structures and other aircraft.

- (p) No airborne radar equipment shall be operated or ground tested on any Airport property where the directional beam of high intensity radar is within three hundred (300) feet, or the low intensity beam is within one hundred (100) feet of an aircraft fueling operation, aircraft mobile fueling vehicle, or aircraft fuel or flammable liquid storage facility.
- (q) Aircraft mobile fueling vehicles shall be equipped with storage tanks which are sectionalized into compartments of not over two thousand (2,000) gallons capacity, or in lieu thereof shall be equipped and operated in accordance with alternate procedures approved, in writing, by the Airport Authority.
- (r) No person shall vend, sell, broker, consign, or offer for sale on Airport property any petroleum fuel or lubricating product without written authorization, and a lease and/or operating permit issued by the Airport Authority, and under the requirements of this Code and rules and regulations of the Airport Authority.

- (s) No person shall dispense any petroleum fuel or lubricating product to motor vehicles and equipment, for either commercial or non-commercial purposes, without written authorization, and a lease and/or operating permit issued by the Airport Authority, and under the requirements of this Code and rules and regulations of the Airport Authority.
- (t) No person shall transport onto Airport property, other than by aircraft, any fuel or lubricating product, without written authorization, and a lease and/or operating permit issued by the Airport Authority, and under the requirements of this Code and rules and regulations of the Airport Authority.
- (u) No person shall transport onto Airport property, other than by aircraft, any fuel product or flammable material unless in approved containers or vehicles.
- (v) Notwithstanding the above, aircraft owners shall not be denied the right to bring fuel and lubricating products onto Airport property for the purpose of self-fueling, provided the transport and distribution of the fuel and lubricating products onto Airport property for such purposes are otherwise in compliance with this Code, applicable federal, state, and local fire and environmental codes, and as otherwise authorized by the lessee of the premises on which such self-fueling activity occurs.

- (w) The applicable standards and recommendations of the National Fire Protection Association (NFPA), as they are amended from time to time, are incorporated herein by reference.”

**SECTION 59.** Section 9.35.590 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Common or non-exclusive use areas.**

- (a) No Airport tenant, operator or other authorized user shall utilize a common use or non-exclusive use area, including an aircraft gate position, in a manner or fashion which interferes with the use of the area by another or which departs from established and authorized procedures for the use of such area. No tenant, operator or user shall allow any condition, nor permit the conduct of any activity, which shall materially or adversely affect, infringe upon, block or interrupt the operations and business activity of other Airport tenants, operators or users.
- (b) No Airport tenant, operator or other authorized user shall utilize a common use or non-exclusive use area; including an aircraft gate position, unless properly trained and authorized personnel supplied by such tenant, operator or user are present for purposes of control and coordination during all periods of such use.
- (c) Upon occupancy of any common or non-exclusive use aircraft gate position, the user assumes full responsibility for compliance with federal and local security requirements and shall be liable for all



finances and penalties resulting from failure to perform or abide by the same.”

**SECTION 60.** Section 9.35.600 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Control of vehicular traffic on the Air Operations Area. Authority to operate on the Air Operations Area.** No person shall operate or cause to be operated any motor vehicle or equipment on the AOA unless its operational need and necessity is directly related to an aviation activity at the Airport, the business of the Airport Authority, or the business of an authorized tenant, authorized subtenant, or other authorized user or contractor of the Airport Authority.”

**SECTION 61.** Section 9.35.610 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Operating on runways, taxiways, and other protected areas.**

- (a) No person at Mid-Continent Airport shall, either as a pedestrian or while operating a motor vehicle or equipment, move beyond the Runway Holding Position and/or ILS Critical Area Holding Position markings of a runway other than as specified in the Airport Standard Operating Procedures, or as may subsequently be required by regulations, and without first having received an appropriate clearance to do so by the Air Traffic Control Tower. Movement upon and across runways and taxiways shall be made as expeditiously as practical.

- (b) Other than an employee or agent of the Airport Authority or the FAA conducting official business, no person at Mid-Continent Airport shall, either as a pedestrian or while operating a motor vehicle or equipment, access, move or operate upon an active Movement Area, including runways and taxiways, without the prior authorization of the Wichita Airport Authority and only after receiving appropriate documented training from the Airport Authority in accordance with 14 CFR Part 139 and Airport Standard Operating Procedures.
- (c) No person at Col. James Jabara Airport shall, either as a pedestrian or operating a motor vehicle or equipment, move beyond the Runway Holding Position markings of a runway, or closer to a taxiway than specified in the Airport Standard Operating Procedures, or as may subsequently be required by regulations, without first determining that no aircraft are on, approaching or departing, and transmitting his or her intentions on the appropriate common traffic advisory frequency (CTAF). Movement on and across runways and taxiways shall be made as expeditiously as practical.
- (d) No person at Col. James Jabara Airport shall, either as a pedestrian or operating a motor vehicle or equipment, operate over, across, upon or points in-between the Runway, or Taxiways A, A1, A2 between A and the Runway, A3 between A and the Runway, A4,

A5, or A7 without the prior authorization of the Airport Authority, and only after the successful completion of appropriate training and certification as required by Standard Operating Procedures.

- (e) Other than an employee or agent of the Wichita Airport Authority or the FAA conducting official business, no person at Col. James Jabara Airport shall, either as a pedestrian or while operating a motor vehicle or equipment, operate over, across, upon or points in-between the Runway, or Taxiways A, A1, A2 between A and the Runway, A3 between A and the Runway, A4, A5, or A7 without the prior authorization of the Wichita Airport Authority and only after receiving appropriate documented training from the Airport Authority.”

**SECTION 62.** Section 9.35.620 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Operations near aircraft.**

- (a) No person, other than the operator of an aircraft service or support vehicle, actively servicing an aircraft, shall operate a motor vehicle at an Airport so as to pass within twenty (20) feet of a parked aircraft, or contrary to any of the distance requirements specified in the Standard Operating Procedures. In the case of an aircraft being loaded or unloaded at ground level on the Mid-Continent Airport commercial passenger terminal apron, no vehicle shall be operated

between said aircraft and the terminal concourses while passengers are enplaning or deplaning;

- (b) No motor vehicle shall pass under any portion of a passenger loading bridge except those required for servicing the aircraft or the passenger loading bridge;
- (c) No motor vehicle shall pass under any portion of a parked aircraft except those required for servicing the aircraft.”

**SECTION 63.** Section 9.35.630 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Two-way radio requirements.**

- (a) No person, other than a person holding a valid, current, and appropriate airman’s certificate or mechanic properly trained and qualified and operating an aircraft, shall be permitted to operate and otherwise engage in two-way radio communications with the ATCT on Mid-Continent Airport without the prior authorization of the Airport Authority. Other than persons holding a valid, current, and appropriate airman’s certificate or mechanic properly trained and qualified and operating an aircraft, two-way radio communications with the ATCT on Mid-Continent Airport is reserved for designated and authorized employees and contractors of the Airport Authority and Federal Aviation Administration trained and authorized to engage in such activities in the discharge of official duties on the AOA of Mid-Continent Airport.

- (b) The authorized operator of a vehicle desiring clearance to operate upon or across a runway or taxiway at Mid-Continent Airport shall, in advance, by direct two-way radio communications with the ATCT, request and receive an appropriate clearance to operate upon or across such Movement Area, and continuously maintain such communication and follow the lawful clearances, directives and instructions issued by the ATCT until clear of the Movement Area. In the event a two-way radio is inoperable or unavailable, persons shall operate such vehicles only under the escort of an authorized motor vehicle and operator equipped with a two-way radio in communications and under the clearance of the ATCT. This requirement shall not apply to operators of vehicles authorized by the Airport Authority to receive pre-established visual signals or clearances, or to operators of vehicles following approved pre-established special procedures in accordance with a current letter-of-agreement with the Federal Aviation Administration.”

**SECTION 64.** Section 9.35.640 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Motor vehicle identification and ramp permits.**

- (a) No person shall operate a motor vehicle on the AOA of Mid-Continent Airport not displaying an official company name and/or logo, or Airport Authority issued vehicle ramp permit issued

pursuant to and in accordance with the Airport Security Plan, and without the permit conspicuously displayed on the vehicle.

- (b) Company-owned or tenant sponsored vehicles or authorized personal vehicles must hold and properly display an Airport Authority issued vehicle ramp permit when operating on the AOA, or be under escort by an authorized person and motor vehicle meeting the requirements of this Section.
- (c) A vehicle ramp permit may be issued for motor vehicles having an operational need and necessity by the Airport Authority to operate on the AOA at Mid-Continent Airport on a regular and continuing basis, and may be renewed annually, semi-annually, or for such other period as may be determined by the Airport Authority in accordance with federal regulations.
- (d) Vehicle ramp permits shall be prominently displayed in such location on the motor vehicle as designated by the Airport Authority. The operator of a motor vehicle for which a vehicle ramp permit has been issued shall at all times comply with the terms of the permit as established by the Airport Authority.
- (e) Temporary vehicle ramp permits may be issued for temporary or limited access for motor vehicles used on the AOA of Mid-Continent Airport for contractors and others engaged in construction or other activities as approved by the Airport Authority.

- (f) Temporary vehicle ramp permits shall be prominently displayed in such location on the motor vehicle as designated by the Airport Authority. The operator of a motor vehicle for which a temporary vehicle ramp permit has been issued shall at all times comply with the terms of the permit as established by the Airport Authority.
- (g) Unless operating within a pre-authorized designated construction area, any motor vehicle bearing a temporary vehicle ramp permit shall, at all times, while on the AOA, remain under control and escort by a person and motor vehicle meeting the requirements of this Section, unless otherwise authorized by the Airport Authority.
- (h) A temporary vehicle ramp permit may be issued for a limited pre-authorized designated area and time for motor vehicles which require occasional or 'one-time' access to a specific location on the AOA of Mid-Continent Airport. Temporary vehicle ramp permits shall be issued at the discretion of the Airport Authority, and shall be valid only for the length of time indicated on the permit. Temporary vehicle ramp permits shall be returned to the Airport Authority on or prior to the expiration of the time indicated on the permit.
- (i) All vehicle ramp permits shall remain the property of the Airport Authority, and are not transferable.
- (j) Lost or stolen vehicle ramp permits shall be immediately reported to the Airport Police and Fire Division.

- (k) Vehicle ramp permits are issued to individuals holding current, valid and appropriate Airport Authority issued ID media and may only be used by the authorized individual. Vehicle ramp permits shall not be loaned, transferred or assigned to other persons.
- (l) Motorized equipment not considered ‘motor vehicles,’ including but not limited to maintenance and construction equipment, tugs, belt loaders, tractors, and snow removal equipment shall be exempt from the requirements of this Section.”

**SECTION 65.** Section 9.35.650 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Driver’s license.** No person shall operate a motor vehicle on the AOA of an Airport, unless such individual maintains in his or her possession at all times a current valid motor vehicle driver’s license or temporary permit, with appropriate endorsements, for the type of vehicle being operated, issued in accordance with the statutes of the State of Kansas. The operation of motorized ‘equipment’ not considered ‘motor vehicles,’ including but not limited to maintenance and construction equipment, tugs, belt loaders, tractors, and snow removal equipment shall be exempt from the requirements of this Section.”

**SECTION 66.** Section 9.35.660 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Designated vehicular routes.** No person shall operate a motor vehicle or equipment on the AOA, other than emergency vehicles responding to an emergency, or authorized Airport Authority or FAA vehicles in the performance



of official duties, unless such person operates on established vehicular routes only.”

**SECTION 67.** Section 9.35.670 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“AOA speed limits and traffic control.**

- (a) No person shall operate a motor vehicle or equipment on the AOA, other than police, security, operations, and emergency vehicles responding to an emergency or urgent safety or security situation, at a speed in excess of fifteen (15) miles per hour, except as otherwise posted and authorized.
- (b) No person shall operate any motor vehicle or equipment on the AOA in violation of any sign, barricade, traffic barricade or other traffic control device.”

**SECTION 68.** Section 9.35.680 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Reckless or careless driving.** No person shall operate a motor vehicle or equipment on the AOA in a reckless or careless manner, so as to present a willful or wanton disregard for the safety of persons or property, or in a careless manner, which is other than in a safe, careful and prudent manner, having regard for aircraft movement, width, grade, curves, corners, traffic, weather conditions, and all other attendant circumstances, so as not to endanger the life, limb or property of any person.”

**SECTION 69.** Section 9.35.690 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Operation of electronic devices while driving on the AOA.** No person shall operate an electronic communications device including, but not limited to cell phone, lap-top PC, iPad, iPhone, audio or video players, or BlackBerry while maneuvering a moving motor vehicle or equipment on the AOA unless it is necessary to do so due to an operational need or necessity.”

**SECTION 70.** Section 9.35.700 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Operation or use of non-approved conveyance devices.**

- (a) No person shall use, ride or drive a unicycle, go-cart, roller skates, roller blades, Segway or a skateboard, and no person shall walk, drive a motorized vehicle, ride a bicycle, or ride a horse upon any area of the Airports made available to the public other than on roads, sidewalks, paths, trails, or rights-of-way provided for such purpose.
- (b) No person shall use, ride or drive a motorcycle, bicycle, unicycle, go-cart, roller skates, roller blades, Segway, or skateboard on the AOA.”

**SECTION 71.** Section 9.35.710 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Vehicle and equipment liability insurance requirements.** Except for governmental vehicles and equipment, no motor vehicle shall enter or be operated

upon the AOA that is not covered by a current and valid liability insurance policy as required by Kansas statute or company ‘umbrella’ policy written by a company authorized and licensed by the State of Kansas to issue such insurance policy.”

**SECTION 72.** Section 9.35.720 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Vehicle and equipment condition and safety requirements.** No person shall operate a motor vehicle or equipment on the AOA unless such motor vehicle or equipment is in good operating condition and repair for a unit of its type, and is equipped as required by applicable local, state and/or federal law.”

**SECTION 73.** Section 9.35.730 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Minimum vehicle and equipment requirements for operation on the AOA and Movement Areas.**

- (a) All motor vehicles and equipment operated on the AOA shall be in good, safe, working order.
- (b) When operating on the AOA motor vehicles and equipment shall be equipped with and have operating the following systems and auxiliary equipment:
  - (1) Headlights;
  - (2) Mobile refueling vehicles – front, side, and tail clearance lights.

- (b) When operating on Movement Areas, Airport Authority approved amber-colored beacon warning lights, certified SAE Type I or II, of rotating, strobe, halogen or LED type.
- (c) Only security, law enforcement or emergency vehicles shall be equipped with and display red and/or blue warning lights.”

**SECTION 74.** Section 9.35.740 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Night and low visibility operations.**

- (a) For night (sunset to half an hour before sunrise) and low visibility conditions (visibility less than one thousand feet), all vehicles and motorized equipment equipped with headlights, taillights (or reflectors) and running or clearance lights operating on the AOA shall be functionally operable and operating.
- (b) For night (sunset to half an hour before sunrise) and low visibility conditions (visibility less than one thousand feet), all vehicles and motorized equipment, equipped with amber warning beacons, shall operate such warning beacon while operating on the AOA.”

**SECTION 75.** Section 9.35.750 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Radio/wireless communications systems.** The Airport Authority retains the sole and exclusive right to approve or withhold approval of any installation or use of systems for the transmission of radio frequency signals on the Airport property. Revenue producing communication systems or systems not directly

applicable to a tenant's primary operation on Airport property are prohibited except upon the specific approval of the Director."

**SECTION 76.** Section 9.35.760 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**"Emergency vehicles.** Any person operating a motor vehicle or equipment on the AOA shall immediately stop and yield the right-of-way upon the approach of law enforcement, security, medical, firefighting and rescue, Airport Operations, or other vehicles responding to an emergency and giving an audible and/or visual warning signal, until emergency vehicles have stopped or passed, unless otherwise directed by a law enforcement officer, Airport Police and Fire Officer, or other authorized representative of the Director of Airports."

**SECTION 77.** Section 9.35.770 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**"Occupants of motor vehicles.** No person shall, while on Airport property, ride on the running board of a moving motor vehicle, stand up in the body of a moving vehicle, ride on the outside of the body of a moving motor vehicle, or ride on such a vehicle with his arms or legs protruding from the body of the vehicle, unless required to do so in the performance of his duties."

**SECTION 78.** Section 9.35.780 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**"Traffic control.** Persons operating motor vehicles or equipment on the AOA shall obey all posted regulatory signs, special signs, pavement markings,

and traffic signals, and all instructions by ATCT, authorized employees, agents, and Airport Police and Fire Officers.”

**SECTION 79.** Section 9.35.790 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Parking.**

- (a) No person shall park a motor vehicle or equipment on the AOA in areas other than those designated or authorized by the Airport Authority, and in no manner contrary to any posted regulatory signs, traffic-control devices or pavement markings.
- (b) No person shall park a motor vehicle or equipment on the AOA as to interfere with the access, ingress or egress to a facility, leasehold, or common-use area used by others, or prevent the passage or movement of aircraft, emergency vehicles, snow removal equipment, or motor vehicles.
- (c) No person shall park a motor vehicle or equipment under passenger loading bridges, blocking access to any passenger loading bridge or blocking a passenger walkway.
- (d) No person shall park a motor vehicle or equipment blocking access to any fire hydrant.
- (e) No person shall park a motor vehicle or equipment blocking access to any terminal door, emergency access or baggage handling area.
- (f) No person shall park a motor vehicle or equipment blocking an aircraft parking position, aircraft taxi-lane or vehicle driving lane.

- (g) No person shall park a motor vehicle or equipment on the AOA in such a manner as to interfere with or prevent an aircraft fueling vehicle from being readily driven away from such aircraft in the event of an emergency.”

**SECTION 80.** Section 9.35.800 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Motor vehicle accidents.**

- (a) Any person operating a motor vehicle or equipment on the AOA which is involved in an accident resulting in injury to any person or damage to any property shall:
  - (1) Immediately stop such vehicle or equipment at the scene of such accident or as close thereto as possible;
  - (2) Notify the Airport Police and Fire Division; and
  - (3) Return to and/or remain at the scene of the accident until Airport Police and Fire personnel have arrived at the scene. Vehicle(s) involved in the accident shall be stopped and parked so as to minimize any obstructions to aircraft and other vehicles.
- (b) Any person operating a motor vehicle or equipment on the AOA which is involved in an accident, and the owner of such vehicle or equipment, if other than the operator, shall make a full report of such accident to the Airport Police and Fire Division, including the names and addresses of the individuals involved, the registration

and license number of the vehicle or vehicles involved, names and addresses of witnesses to the incident, and such other information relevant to the accident upon request of any Airport Police and Fire Officer investigating the accident. The operator of any motor vehicle or equipment involved in such accident shall, upon request, exhibit such licenses, registration or other documents relevant to such accident or the persons or property involved to any Airport Police and Fire Officer investigating the accident.

- (c) In the event an Airport Police and Fire Officer investigating an accident has reason to believe that a mechanical failure in a vehicle or equipment involved in the accident was or may have contributed to the cause of such accident, the Airport Police and Fire Officer may temporarily impound such vehicle or equipment until such time that a mechanical failure can be ruled out as causing or contributing to the cause of the accident.”

**SECTION 81.** Section 9.35.810 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Contractor’s access and operations on the Air Operations Area.**

Ingress and egress from designated construction sites located on the AOA by motor vehicles and equipment belonging to or under the supervision of an authorized contractor, shall be made only by designated routes, gates, and at such times as may be established or approved by the Airport Authority. Construction



equipment shall be operated and stored in accordance with procedures established or approved by the Airport Authority.”

**SECTION 82.** Section 9.35.820 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Denial of departure.** The Director may prohibit any aircraft from starting, taxiing, operating upon or departing from an Airport at any time, under any known circumstances, which in the judgment of the Director, may result in a safety or security hazard to persons or property on or off Airport property, or may violate local, state or federal laws or regulations with the exception of federal laws under the exclusive jurisdiction and pre-emptive authority of a federal agency.

Any person violating any provision of this Section of the Code is guilty of a misdemeanor and shall be punished by a fine of not more than five hundred dollars (\$500) and/or an imprisonment of not more than six (6) months and/or both such fine and imprisonment.”

**SECTION 83.** Section 9.35.830 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Tampering with aircraft.** No person shall interfere or tamper with any aircraft on Airport property, or put in motion such aircraft, or use or remove any aircraft, aircraft parts, instruments or auxiliary systems without positive evidence of ownership, or evidence of the owner’s approval.

Any person violating any provision of this Section of the Code is guilty of a misdemeanor and shall be punished by a fine of not more than five hundred

dollars (\$500) and/or an imprisonment of not more than six (6) months and/or both such fine and imprisonment.”

**SECTION 84.** Section 9.35.840 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Interference with aircraft or flight or cabin crew operations.**

- (a) No person while a passenger aboard an aircraft at an Airport shall disturb, interrupt or otherwise interfere with:
  - (1) The enplanement or deplanement of aircraft passengers;
  - (2) The departure or arrival of any aircraft; or
  - (3) Any member of a flight or cabin crew aboard an aircraft in the performance of his/her duties.
- (b) No person, while a passenger aboard an aircraft at an Airport, shall refuse or fail to comply with the lawful directives of any flight or cabin crew member, or to observe and obey federal regulations relating to the safety and security of passengers or aircraft. While aboard an aircraft at an Airport, failure to comply with the lawful directives of any flight or cabin crewmember, or to observe and obey federal regulations relating to the safety and security of passengers or aircraft, shall constitute a disturbance, interruption, or interference with a member of a flight or cabin crew in performance of his or her duties.
- (c) No person shall, while a passenger aboard an aircraft at an Airport, refuse to leave such aircraft when so directed by a flight or cabin

crew member, an agent or representative of the owner or operator thereof, when such person has committed an act which is a breach of his or her contract of carriage under the terms and conditions set out in the air carrier's tariffs. Such acts shall include, but shall not be limited to: violations of the Federal Aviation Administration Regulations concerning fastening seat belts, observance of no smoking signs, placement of luggage, consumption of alcoholic beverages, intoxication, and obstruction of aisles and exits.

- (d) No person shall, while a passenger aboard an aircraft at an Airport, assault, intimidate, threaten, or harass any other person, or commit any act which is defined by local, state or federal law as a breach of the peace, an act of intimidation, or a threat against any other person.
- (e) No person shall, while a passenger aboard an aircraft at an Airport, refuse to leave such aircraft when so directed by a flight or cabin crew member, an agent or representative of the owner or operator thereof, when such person has committed an act aboard the aircraft which is defined by local, state, or federal law as an assault, a breach of the peace, an act of intimidation, or a threat against any other person.

Any person violating any provision of this Section of the Code is guilty of a misdemeanor and shall be punished by a fine of not more than

five hundred dollars (\$500) and/or an imprisonment of not more than six (6) months and/or both such fine and imprisonment.”

**SECTION 85.** Section 9.35.850 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Inspection of certification.** Any person who holds an airman certificate, medical certificate, or authorization must present it for inspection upon request of any commissioned law enforcement officer of the Wichita Police Department or Airport Police and Fire Division.”

**SECTION 86.** Section 9.35.860 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Waiver by the Director of Airports for Governmental Operations.** Notwithstanding any provisions, requirements or prohibitions set forth in this Chapter, the Director shall have the authority to waive any such provisions, requirements, or prohibition for any military branch of the United States Armed Forces operating on any Airport property to operate thereon in accordance with governmental requirements applicable to such operations, so long as such waiver(s) are not in violation of federal law or regulation, and such waiver(s) would not impose an unreasonable hazard or risk to the health, welfare, and safety of the flying and general public.”

**SECTION 87.** Section 9.35.870 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Penalties.**

- (a) Any person who violates the provisions of this Chapter is guilty of a misdemeanor.
- (b) Every person who is convicted of violating the provisions of this Chapter may be punished by a fine of not more than five hundred dollars (\$500) for each violation of this Chapter, and when specifically stated within certain Sections herein, an imprisonment of not more than six (6) months and/or both such fine and imprisonment.
- (c) In addition to the penalties set forth in this Section, if the violator is authorized to access Secured Area, AOA, SIDA, Sterile Area or other Restricted Areas of the Airport, the Director may revoke or suspend the violator’s access and identification media and access to the Secured Area, ASOA, SIDA, Sterile Area or other Restricted Areas of the Airport.”

**SECTION 88.** Chapters 9.20 and 9.22 of the Code of the City of Wichita, Kansas, are hereby repealed.

**SECTION 89.** This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once of a summary of the ordinance, in the official city paper. Publication shall occur after July 1, 2012 and comply with the provisions of House Bill 2166 (2012).

PASSED by the governing body of the City of Wichita, Kansas, this 22nd day of May,  
2012.

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Carl Brewer, Mayor

ATTEST:

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Karen Sublett, City Clerk

Approved as to Form:

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Gary E. Rebenstorf  
Director of Law

**City of Wichita  
City Council Meeting  
May 15, 2012**

**TO:** Mayor and City Council

**SUBJECT:** Amendments to Chapter 3.84 of the Code of the City of Wichita pertaining to the Licensing of Taxicab Companies, Taxi Drivers and Inspection of Taxicab Vehicles

**INITIATED BY:** City Manager's Office

**AGENDA:** New Business

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**Recommendation:** Place the ordinance on first reading.

**Background:** Chapter 3.84 of the Municipal Code (Wichita Taxicab Code) was adopted in 1984. Aside from fare cap increases, it has remained untouched since that time. Two primary factors led City staff to review the current code and propose the amended ordinance for the Mayor and City Council's consideration. First, the City needs to reassign the responsibility to enforce the Wichita Taxicab Code. Wichita Transit currently enforces the code; however, a Federal Transit Administration audit identified this responsibility as a conflict of interest that, if left uncorrected, could jeopardize the agency's eligibility for future federal funding. Second, customers of Wichita's taxicab industry, including businesses that serve visitors to Wichita, requested the City's help to improve the condition of taxicabs, the quality of customer service provided by drivers, and dispatching reliability. A professional, customer service oriented taxicab industry will positively represent Wichita and benefit all stakeholders in the taxicab industry.

Internally, the revision process included staff from Transit, Finance, Public Works & Utilities, Airport, the City Manager's Office, and the Wichita Police Department. The staff team engaged owner/operator and customer stakeholders throughout the ordinance revision process (see Attachment I). As a result, the objectives of the process were achieved amicably and without the creation of burdensome regulations.

**Analysis:** The proposed amendments to the Wichita Taxicab Code are intended to achieve the following primary objectives.

- **Reassign Transit's responsibility to enforce the Wichita Taxicab Code.**
  - Amendments authorize the Department of Finance to enforce the code and license taxicab companies and drivers. The Department of Public Works & Utilities will inspect taxicab vehicles.
- **Improve the level of customer service provided by drivers and the condition of taxicab vehicles.**
  - Amendments include stricter customer service and vehicle condition requirements. Taxicab drivers will attend a customer service training course – at no cost to the driver – once every two years, as a new licensing requirement. *Go Wichita* will conduct the training at no cost to the City. A sensitivity and awareness component, regarding both cultural diversity and individuals with disabilities, will be included in the customer service course.
- **Provide a structure to effectively and responsively enforce the Wichita Taxicab Code.**
  - Amendments designate the Assistant Director of Finance as the Taxicab Enforcement Officer, authorized to:
    1. Coordinate the City's inspection, licensing and enforcement efforts.

2. Serve as a single point of contact and a liaison to all stakeholders to investigate and resolve violations, complaints and disputes.
- **Move toward cost recovery for the City's taxicab licensing and inspection services.**
- The proposed ordinance includes revisions to the fee schedule (see Attachment II) that will help the City to recover a larger percentage of its administrative costs. Additionally, Public Works & Utilities will recover the full cost of providing semiannual taxicab vehicle inspections.
- **Address community input received subsequent to the March 20, 2012 City Council Workshop.**
- Following the City Council Workshop, the Wichita/Sedgwick County Access Advisory Board recommended additional amendments including:
    1. A requirement that licensed taxicab companies provide at least one wheelchair accessible vehicle in its fleet which is available for dispatch during all hours of operation (24 hours per day, 7 days per week).
    2. Include in the required customer service class (proposed in the amendments), training on disability awareness and sensitivity.
  - Staff is evaluating the first recommendation and will continue working with the stakeholders on the issue. The Advisory Board's second recommendation is included in the proposed amendments.

These provisions provide that Taxicab drivers may not:

1. Refuse to serve a person with a disability who can use a taxicab vehicle;
2. Charge higher fares or fees to transport individuals with disabilities, and their equipment, than are charged to other persons;
3. Refuse to provide assistance with stowing mobility devices (wheelchairs, walkers, etc.); and
4. Refuse to allow service animals to ride with passengers with disabilities.

It is recommended that publication and implementation of the ordinance be delayed until after July 1, 2012. House Bill 2166 amends K.S.A. 12-3007 regarding the publication requirements of City ordinances. The bill has been approved and signed by the Governor. In lieu of publishing the entire text of an amended ordinance, the bill allows a summary to be published. The delay will result in a budget savings of approximately \$3,500.

**Financial Considerations:** Administrative costs for licensing and permitting will shift from Wichita Transit to the Department of Finance. Fee increases proposed in the revised ordinance move the City toward full cost recovery of licensing, permitting, and taxicab vehicle inspections.

**Goal Impact:** Amendments will assist in providing a Safe and Secure community and promoting downtown economic development.

**Legal Considerations:** The ordinance has been prepared and approved as to form by the Law Department.

**Recommendations/Actions:** Place ordinance on first reading.

**Attachments:** Ordinance, Attachment I: Overview of Stakeholder Engagement Process, and Attachment II: Proposed Fee Amendments.



## **Attachment I**

### **Overview of the Stakeholder Engagement Process**

The stakeholder engagement process was positive and productive, resulting in consensus buy-in of the proposed amendments to the Wichita Taxicab Code. Beyond the formal stakeholder meetings, staff maintained an open dialogue with all of the individuals listed below throughout the ordinance revision process.

Two primary stakeholder groups were engaged in the ordinance revision process. The first group, which included customers and businesses that rely on the taxicab industry, was represented by John Rolfe and Maureen Hofrenning of Go Wichita. The second group, which included Wichita's licensed taxicab companies, was represented by Ted Hill of ABC and American Cabs, Tim Armbrust of Best Cabs, and Mr. and Mrs. George Armbrust of Best Cabs. Staff conducted the following meetings with these stakeholder groups.

- **January 27, 2012** – Staff met with John Rolfe and Maureen Hofrenning to gain further insight into the concerns of customers and businesses – particularly hotels – that depend on the local taxicab industry.
- **January 31, 2012** – Staff met with the Go Wichita committee of hotel general managers to update the committee on the ordinance revision process and hear their concerns.
- **February 9, 2012** – Staff met simultaneously with both the customer and owner/operator stakeholder groups. John Rolfe participated over the phone and Maureen Hofrenning, the Armbrust Family and Ted Hill were present.
- **February 29, 2012** – Staff met with the taxicab owner/operator stakeholder group to continue developing solutions that accomplish the objectives of the ordinance revision process. The Armbrust Family and Ted Hill were present.

## Attachment II

### Proposed Fee Amendments

The City processes three taxicab company licenses, 85 taxicab permits (each requiring two inspections per year), and approximately 167 new and renewal applications for taxicab drivers which all require background checks conducted by the Wichita Police Department. The City does not currently assess taxicab driver license and taxicab company operator applicants a fee for conducting criminal background checks. Additionally, under the current licensing and permitting fee structure, the City only recovers \$6,000 (approximately 42%) of the cost of processing licenses and permits.

Under the proposed fee structure (see table), the licensing and permitting revenue would be approximately \$13,500 annually. Full cost recovery is at least \$14,000 which does not include interim services such as reissuing a driver's license and badge or re-inspecting a taxicab vehicle and/or taximeter. Additionally, under the proposed fee structure the cost of a taxicab vehicle permit is based on the cost incurred by the Department of Public Works & Utilities to conduct semi-annual inspections of the vehicle.

<b>Proposed Fee Structure</b>			
<b>Item</b>	<b>Frequency</b>	<b>Current Rate</b>	<b>Proposed Rate</b>
Taxicab drivers license – new	Once – first time to receive license	\$7.50	\$15
Taxicab drivers license – renewal	Annually (after first license)	\$5	\$15
Taxicab drivers license – reprint	As needed	\$5	\$10
Taxicab drivers badge – replacement	As needed	\$5	\$10
Taxicab drivers license - photo	No less than every 6 years	Driver Provides	City Provides
Taxicab drivers license – background check	Annually	None	\$10
Taxicab company license	Annually	\$200	\$200
Taxicab permit (including semiannual inspections)	Annually	\$50	\$100
Taxicab permit re-inspection	As needed	None	\$25

ORDINANCE NO. 49-278

AN ORDINANCE AMENDING SECTIONS 3.84.010, 3.84.030, 3.84.040, 3.84.050, 3.84.060, 3.84.070, 3.84.080, 3.84.090, 3.84.100, 3.84.110, 3.84.130, 3.84.140, 3.84.150, 3.84.160, 3.84.170, 3.84.180, 3.84.190, 3.84.200, 3.84.210, 3.84.220, 3.84.240, 3.84.250, 3.84.300, 3.84.320, 3.84.330, 3.84.340, 3.84.360, 3.84.370, 3.84.390, 3.84.410, 3.84.420, 3.84.430, 3.84.440, 3.84.450, 3.84.480, 3.84.490, 3.84.500, 3.84.520, 3.84.530, 3.84.570, AND 3.84.580 CREATING SECTIONS 3.84.025, 3.84.035, 3.84.105, 3.84.108, 3.84.155, 3.84.215 AND 3.84.323, OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO TAXICABS, AND REPEALING THE ORIGINALS OF SECTIONS 3.84.010, 3.84.030, 3.84.040, 3.84.050, 3.84.060, 3.84.070, 3.84.080, 3.84.090, 3.84.100, 3.84.110, 3.84.130, 3.84.140, 3.84.150, 3.84.160, 3.84.170, 3.84.180, 3.84.190, 3.84.200, 3.84.210, 3.84.220, 3.84.240, 3.84.250, 3.84.280, 3.84.300, 3.84.310, 3.84.320, 3.84.325, 3.84.330, 3.84.340, 3.84.350, 3.84.360, 3.84.370, 3.84.390, 3.84.410, 3.84.420, 3.84.430, 3.84.440, 3.84.450, 3.84.480, 3.84.490, 3.84.500, 3.84.520, 3.84.530, 3.84.570 and 3.84.580 OF THE CODE OF THE CITY OF WICHITA, KANSAS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION1. Section 3.84.010 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Title.** This chapter shall be known and may be cited as the 'Wichita Taxicab Code.'"

SECTION 2. Section 3.84.025 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**"Enforcement of Provisions of Code.** The Wichita Police Department, the Wichita Department of Public Works and Utilities, the Wichita Airport Authority, the authorized representatives of such departments, and the

Taxicab Enforcement Officer shall be responsible for the enforcement of all provisions of this Code.”

SECTION 3. Section 3.84.030 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Definitions.** As used in this Code, unless the context otherwise requires, the following terms shall have the meaning ascribed:

1. ‘Airport Property’ means any property, facilities and improvements owned, leased and/or under the control and jurisdiction of the Wichita Airport Authority and roads and streets contained thereon.

2. ‘Central place of business’ means an office located within the City of Wichita and staffed by personnel responsible for the operations of the taxicab company for which the taxicab company license is issued.

3. ‘City’ means the City of Wichita, Kansas.

4. ‘City Manager’ means the City Manager of the City or his/her designee.

5. ‘City Treasurer’ means the City Treasurer of the City or his/her designee.

6. ‘Cruising’ means the continuous or repeated operation over the public streets of a taxicab in search of picking up or solicitation of prospective passengers.

7. ‘Director of Airports’ means the Director of the Wichita Airport or his/her designee.

8. 'Director of Public Works and Utilities' means the Director of the Department of Public Works and Utilities of the City of Wichita, or his/her designee.

9. 'Emergency vehicle starting service' means the use of a taxicab vehicle for the jump starting of another vehicle having a dead or disabled battery.

10. 'Exclusive ride' means exclusive use of a taxicab by one or more passengers at a time having common origins and destinations.

11. 'Fixed route' means a specific route along which a taxicab vehicle operates at given times and dates.

12. 'Fixed schedule' means taxicab service which is provided in an area by means of vehicles serving specific locations on a given and fixed time schedule.

13. 'Group ride' means the use of a taxicab by a group of passengers who generally enter the taxicab at the same location and disembark at the same destination, and pay a single fare for the trip.

14. 'Major body damage' means substantial damage to a vehicle's fender(s), hood, quarter panel(s), door(s) or trunk lid.

15. 'Motor vehicle' means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

16. 'Person' means any individual, firm, association, company, partnership, or other legal entity.

17. 'Police Chief' means the Chief of the Wichita Police Department or his/her designee.

18. 'Radio dispatch' means a two-way system including cellular or wireless telephones capable of handling voice and/or data communications for the purpose of dispatching vehicles and receiving calls from the drivers of such vehicles.

19. 'Rate card' means a card issued by the City Treasurer for display in each taxicab, which contains: a) the rate of fare then in force; b) information advising the passenger of their right to a receipt; c) information regarding passenger's rights pursuant to this code and d) contact information for the Taxicab Enforcement Officer.

20. 'Shared ride' means the nonexclusive use of a taxicab by two or more passengers, generally traveling between different points of origin and/or destination, but in the same general direction and each paying an individual fare for the trip.

21. 'Street' means street, avenue, boulevard, thoroughfare, trafficway, alley and any other public way for vehicular travel.

22. 'Taxicab Enforcement Officer' means the individual or his or her designee appointed by the City Manager to administer the provisions of this code.

23. 'Taxicab' means any motor vehicle which is furnished for hire on a call or demand basis to transport persons, packages or messages where the route traveled and trip destination are controlled by the passenger, and a charge or fare

is based upon time and mileage recorded and indicated on a taximeter except that the following shall not be considered to be taxicabs:

a. Motor buses operated by Wichita Transit of the City of Wichita;

b. Motor buses and motor vehicles engaged exclusively in the transportation of students to and from school, commonly known as school buses;

c. Vehicles operated by a person or company used to transport persons who are the employees, patrons, guests, residents or customers of the person or company, where the provision of such transportation is incidental to the business of such person or company and no fee is charged;

d. Group riding or an arrangement between individuals whereby they pool their private transportation resources either by using the personal automobile of one member of the group with the others contributing to the costs of operating the same, or by rotating the use of their personal automobiles with joint contributions to the cost by the other members of the group or when any employer provides transportation for its employees and for no other individuals.

e. Vehicles which are licensed as shuttles or limousines by the City of Wichita.

24. 'Taxicab company' means any person, company or corporation licensed under the provisions of this chapter who provides a taxicab service; on a

city-wide basis and who holds legal title, or who has the legal right of possession, or the legal right of control of the vehicle or vehicles utilized in providing, the service.

25. 'Taxicab Company License' means the license under which a person, firm, partnership, association or corporation is authorized to provide taxicab services as defined by this chapter.

26. 'Taxicab driver's license' means the license issued under this chapter to an individual to drive a taxicab.

27. 'Taxicab Vehicle permit' means the permit issued to a vehicle designated as a taxicab.

28. 'Taximeter' means a meter instrument or device attached to a taxicab which measures the distance driven and the waiting time upon which the fare is based."

SECTION 4. Section 3.84.035 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**"Taxicab Enforcement Officer.** The Taxicab Enforcement Officer is authorized to:

- (a) Administer and enforce the provisions of this code;
- (b) Represent the City and serve as a liaison between the public, licensees and the Wichita hotel and tourism industry in resolving complaints regarding the operation of taxicabs;



(c) Coordinate with the Police Chief, Director of Public Works and Utilities, and Director of Airports to determine the denial, revocation and/or suspension of licenses and permits.

(d) Establish, under the authority of the City Manager, any implementing regulations or guidelines which are consistent with the requirements of this code.”

SECTION 5. Section 3.84.040 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Taxicab Company Licensing requirements.**

(a) No person shall conduct business as a taxicab company or allow to be operated upon the streets of the city any taxicab without first having obtained a license from the City Treasurer as hereinafter provided. A separate commercial ground transportation operating permit, including the payment of permit fees, may be required by the Director of Airports in accordance with Airport Standard Operating Procedures and policies for commercial ground transportation services on Airport property.

(b) The holder of a taxicab company license shall be responsible for obtaining and monitoring all taxicab vehicle permits for vehicles operated as a taxicab.

(c) A taxicab company licensee shall also be responsible for seeing that all standards and requirements pertaining to the taxicab company, taxicab vehicle or taxicab driver are complied with.”

SECTION 6. Section 3.84.050 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Requirements for obtaining a taxicab company license.** (a) Any person, firm, partnership, association or corporation meeting the following requirements shall be issued a taxicab company license. An application for such a license, as specified in Section 3.84.070, shall be made to the City Treasurer. Such application shall be reviewed by the Taxicab Enforcement Officer, Director of Public Works and Utilities, and the Police Chief and, if approved, shall be in effect for one year from the date of issuance.

(b) No company license shall be approved unless the applicant meets the following minimum standards. The applicant shall have:

1. A central place of business open and staffed a minimum of eight hours a day, five days a week;
2. A dispatch system capable of receiving calls and dispatching service, and in operation seven days a week twenty-four hours a day;
3. Sufficient operational taxicabs to provide service on a city-wide basis, defined here as requiring a minimum of ten vehicles meeting the vehicle standards specified in Section 3.84.140;
4. All taxicabs shall be so equipped and operated that they may be dispatched by radio;
5. The capability to respond to a request for service, inside the corporate limits of the city in a reasonable time;

6. Facilities and personnel sufficient to insure that the requirements of this chapter are met by every taxicab operated by the company;

7. Insurance in force which meets or exceeds the requirements of Section 3.84.100;

8. A supervisor on duty and in charge of taxicab operations all hours during which service is made available by the company;

9. The maintenance of written records of all complaints relating to service and charges of the taxicab drivers and the actions taken by the supervisor or other company personnel as to such complaints.”

SECTION 7. Section 3.84.060 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Right of inspection and entry.** (a) The taxicab company licensee, and any person employed by the company, shall allow access and inspection by any official designated to enforce the provisions of this chapter to any records, taxicabs and taximeters necessary to verifying compliance with the requirements of this code.”

SECTION 8. Section 3.84.070 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Application for taxicab company license.** All persons applying for a taxicab company license shall file with the City Treasurer an application on forms provided by the City Treasurer which includes:

1. The name of the applicant the names, addresses, e-mail addresses and telephone numbers of the owners of the company or in the case of a

corporation, the owner of any capital stock thereof, and the address of the central place of business;

2. The number of taxicabs to be operated under the company license with a complete description of each vehicle including the number of persons it is constructed to carry, the model, the year of production, the vehicle identification number and the state license number;

3. Proof that the insurance requirements specified in Section 3.84.100 have been met;

4. A description of the proposed color scheme, insignia, trade style and/or any other distinguishing characteristics of the proposed vehicle design;

5. Business name, address, e-mail address and telephone number of the taxicab company;

6. Proof that each taxicab is currently registered with the State of Kansas;

7. Whether the applicant, partner, or shareholder has been convicted of a felony within the previous five years, has been or is a registered sex offender, has been convicted of violating any provisions of this code or has ever had a license under this chapter suspended or revoked;

8. A schedule of proposed fees.”

SECTION 9. Section 3.84.080 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Payment of fees.** The application for a taxicab company license shall be accompanied by the annual license fee of two hundred dollars. In addition, an

annual vehicle permit fee of one hundred dollars for each vehicle to be operated by the taxicab company shall accompany the company license application.

All such fees are annual, and must be paid at the time of the application or application renewal. No license shall be issued unless all licensing fees have been paid to the City Treasurer.

The Director of Airports may establish additional permit fees in accordance with Airport Standard Operating Procedures and policies for commercial ground transportation services on Airport property.”

SECTION 10. Section 3.84.090 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Eligibility requirements.** No taxicab company license or renewal thereof shall be granted to:

(a) Any person who within five years immediately preceding the date of making application, has been convicted of or has pleaded guilty to any felony, pursuant to the laws of any city, state or of the United States or shall have forfeited his bond to appear in court to answer charges for any such offense;

(b) Any partnership, unless all the partners shall be eligible to receive a license as an individual;

(c) Any person, partnership or corporation who, within the two years preceding the application, has had a license revoked under the provisions of this chapter;

(d) A corporation, if any manager, officer or director thereof, would be ineligible, as an individual, to receive a license hereunder for any reason. A

corporation, if any stockholder owning in the aggregate more than twenty percent of the stock of such corporation, would be ineligible as an individual for any reason other than age;

(e) Any person who is not at least eighteen years of age;

(f) Any person who at the time of application for renewal of any license issued hereunder would not be eligible for such license upon a first application;

(g) Any person who is now or has ever been registered as a sexual offender with any federal, state, county or local government.”

SECTION 11. Section 3.84.100 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Insurance requirements.** (a) It shall be the responsibility of the taxicab company licensee to see that all taxicabs operated by the company meet and maintain the insurance requirements established in this chapter.

(b) An insurance policy, covering each and every taxicab owned, operated or leased by the company shall be provided from an insurance company licensed to do business in the state and having the following insurance policy limits:

1. Liability coverage of not less than one hundred thousand dollars for the injury to, or death of, one person in any one accident and, a limit of not less than three hundred thousand dollars because of injury to, or death of, two or more persons in any one accident, and to a limit of not less than fifty thousand dollars for property damages in any one accident

or the minimum limits that may be established by state or federal laws for the type/size of vehicle or number of passengers transported;

2. Such policy of insurance shall be in effect and cover each and every taxicab while licensed by the city and shall be effective whether the taxicab is being driven by: the owner, his agent, employee, taxicab driver, lessee or licensee.

3. Such policy shall be effective until at least twenty days after written notice of such cancellation has been filed with the Taxicab Enforcement Officer and written acknowledgment of the service of such notice has been given to the company by the Taxicab Enforcement Officer;

4. Such policy shall contain all of the conditions required by the laws of the state and by the insurance commissioner of the state and shall provide for actual notice to the Taxicab Enforcement Officer of any changes, cancellation or termination of such policy.”

SECTION 12. Section 3.84.105 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Duty of taxicab company licensees to enforce compliance by drivers.**

(a) No taxicab company licensee will allow an individual to drive a taxicab, if the licensee knows or has reasonable cause to know that the individual has failed to comply with this code, the rules and regulations established by the Director of Airports on Airport property, the Taxicab Enforcement Officer, or other applicable state or federal law;

(b) Each taxicab company licensee shall insure that no taxicab is operated in an unsafe mechanical condition, with major body damage, or after being ordered out of service by an official designated to enforce the terms and conditions of this code;

(c) Each taxicab company licensee will be responsible to provide overall taxicab service to the public;

(d) Each taxicab company licensee will promptly respond to all complaints by passengers, and other members of the public;

(e) Each taxicab company licensee will promptly respond to all requests for information from the Director of Public Works and Utilities, Chief of Police, Director of Airports or the Taxicab Enforcement Officer or their designees;

(f) The taxicab company licensee shall maintain the company's daily dispatch records for a period of two years. These dispatch records shall be available for inspection at all times by the Taxicab Enforcement Officer or other law enforcement agencies, and officials designated to enforce the terms and conditions of this code."

SECTION 13. Section 3.84.108 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**"Non-transferability of taxicab company license.** No taxicab company license may be sold, assigned, mortgaged or otherwise transferred, nor may there be any modification of ownership as to stock transfer, new or additional partners, by the licensee."



SECTION 14. Section 3.84.110 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Revocation/suspension of taxicab company license.**

The Taxicab Enforcement Officer shall provide written notice of the intent to revoke or suspend a taxicab company license by personal service or by certified mail, return receipt requested. The notice shall be sent to the mailing address of the company licensee on file with the City Treasurer. The notice shall provide the effective date of the revocation or suspension of the license. Such notice shall detail the reasons or basis for the revocation or suspension of the license. No revocation or suspension shall be imposed on less than five days notice to the licensee, and shall specify the rights of the licensee to appeal any such denial, revocation or suspension.

In addition to revocation or suspension of company license for failure to comply with the requirements of this chapter, license may also be revoked or suspended for the following reasons:

1. The failure of any company licensee to pay any judgment against ~~him~~ it within ten days after such judgment becomes final and is not superseded by a proper bond on appeal.
2. The cancellation, withdrawal or other termination of insurance or failure to maintain the same in accordance with the provisions of this code.

3. The taxicab company licensee has violated any of the provisions of this code or failed to comply with any rule or regulation established by the City of Wichita.

4. The failure of a taxicab company licensee to rectify any violations of this code.

5. The company licensee made a misrepresentation or false statement when obtaining a license, renewal of a license or additional licenses or permits.

6. The company licensee becomes ineligible to obtain a license.

In case of the revocation of any license, no new license shall be issued to such licensee for a period of two years from the date of the revocation.

In addition to the provisions of this section, the Director of Airports may suspend or revoke operating permits for operation of taxicabs while on airport property in accordance with Airport Standard Operating Procedures and policies for commercial ground transportation services.”

SECTION 15. Section 3.84.130 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Taxicab vehicle permit.** (a) It shall be the responsibility of a taxicab company licensee to obtain a taxicab vehicle permit for each vehicle owned, operated, leased or employed in any way by the taxicab company licensee. The

request for each such permit shall be made at the time of filing the company license application.

(b) For each vehicle permit requested, an annual fee of one hundred dollars shall be paid at the time of the filing of the taxicab company license application or renewal application. Such fee shall include costs for inspections required by Section 3.48.150.

(c) All persons applying for a taxicab permit shall file with the City Treasurer an application on forms provided by the City Treasurer which includes:

1. The name of the applicant, business name, address and telephone number of the taxicab company;
2. Make, model, year of production, the vehicle identification number and the state license number of the vehicle;
3. Proof that the insurance requirements specified in Section 3.84.100 have been met; and
4. Proof that the vehicle is currently registered with the State of Kansas.

(d) In addition to the annual fee prescribed by this chapter, the request for vehicle permits shall be accompanied by a vehicle inspection record for each vehicle, as specified in Section 3.84.150. This inspection record must verify that the vehicle for which a permit is being requested has been inspected and meets all vehicle requirements specified in this chapter. In no event shall a permit be issued for a vehicle which fails to meet the requirements of this chapter.

(e) Each taxicab must have a permit issued by the City Treasurer. The permit will identify each vehicle by a unique number in accordance with rules and procedure established by the Taxicab Enforcement Officer.”

SECTION 16. Section 3.84.140 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“**Taxicab vehicle standards.** Vehicles may be used as taxicabs ~~vehicles~~ provided such motor vehicles ~~also~~ meet the following standards and requirements:

1. The maximum average fleet age of taxicabs to be operated under any company license shall be eight years. The average fleet age shall be determined at the time of application for or renewal of taxicab company license each year and shall be calculated by adding the ages of all vehicles to be operated under the license and dividing the total by the total number of those vehicles. The age of each vehicle shall be determined by subtracting its model year from the current calendar year. Vehicles added to a fleet or replacing other fleet vehicles during a license year shall be no older than the maximum average fleet age allowed for the calendar year in which they are added or replaced.

2. Any vehicle used as a taxicab shall be kept clean, of good appearance, in good repair, properly equipped and in a safe condition. All pollution control equipment and safety devices originally installed by the manufacturer shall also be maintained in good working order. To assure compliance, all such vehicles shall be submitted for inspections as specified in Section 3.84.150.

3. Safety seat belts shall be provided for each passenger the vehicle is constructed to accommodate. Such seat belts shall at all times be maintained in a functional manner and be submitted for inspections as specified in Section 3.84.150.

4. Doors must be provided which open directly into the area of the vehicle used for passenger seating. These doors must be easily opened from the inside by a passenger. For a nonvan type vehicle, a minimum of four doors must be provided. In addition for nonvan type vehicles, windows must also be easily opened from the inside.

5. Every vehicle shall be equipped with sufficient nonglare headlights, proper rear lights and be capable of being properly heated in winter or during periods of cold weather and air-conditioned in summer or during periods of warm weather.

6. Every vehicle shall be well painted and in the color scheme or manner specified in the taxicab company's license application.

7. Every vehicle shall be equipped with a frame for the proper display of the vehicle permit, the taxicab driver's license, and a rate card.

8. Every vehicle shall have plainly painted on each side of the vehicle and the rear of the vehicle, in letters at least two inches in height the name and telephone number of the company operating the taxicab. A number assigned by the company for identifying the vehicle shall also be painted in the same general locations with numerals at least four inches in height. No advertising which covers or obstructs the view of this information shall be allowed.”

SECTION 17. Section 3.84.150 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Taxicab vehicle inspections.** (a) To insure compliance with the foregoing provisions, each taxicab shall be inspected within thirty days prior to receiving a permit and at least once each six months thereafter so long as the vehicle remains permitted as a taxicab. Such inspections shall be conducted by the Director of Public Works and Utilities. The inspections shall include inspections of the vehicle surface, taximeter, motor, mechanical and safety equipment and underbody according to standards specified by the Director of Public Works and Utilities. Any vehicle not passing inspection shall not be permitted; or if permitted, shall not be operated as a taxicab until all deficiencies are corrected. A re-inspection fee of \$25.00 will be assessed for the re-inspection of any vehicle which fails an initial inspection. Random inspections of taxicabs and records shall be made by the Director of Public Works and Utilities or his/her designated representatives to insure compliance with the terms and conditions of this code. A company licensee shall make a taxicab available for inspection with at least forty-eight (48) hours notice when ordered to do so by the Director of Public Works and Utilities or the Taxicab Enforcement Officer.

(b) A record of each inspection for every vehicle permitted as a taxicab shall be maintained at the office of the taxicab company’s place of business along with receipts for any repairs made to the vehicle. Each vehicle shall have attached a sticker or decal showing the date of the last inspection.

These records shall be maintained by the taxicab company until the vehicle is no longer utilized as a taxicab.

(c) All complaints regarding taxicab conditions shall be referred to the taxicab company who shall keep a record of all complaints received and the disposition thereof.”

SECTION 18. Section 3.84.155 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Inspection Compliance Decal Required.** (a) It shall be unlawful for any person to drive, allow or cause to be driven any taxicab that does not have a current inspection compliance decal affixed.

(b) Such inspection decal shall be placed in the lower corner of the driver’s side front window.

(c) The taxicab company licensee shall remove and return to the Taxicab Enforcement Officer decals of any taxicab which is removed from service.”

SECTION 19. Section 3.84.160 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Nontransferability of taxicab vehicle permit.** (a) A taxicab vehicle permit is not transferable. If a taxicab is sold, has its ownership transferred, or is no longer being used for taxi service, the company licensee shall have the vehicle permit returned to the Taxicab Enforcement Officer. All distinctive taxicab markings shall be removed before the vehicle is placed into operation for any other purpose.”

SECTION 20. Section 3.84.170 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Revocation/suspension of taxicab vehicle permit.** If at any time a taxicab is found to be in violation of this chapter, the Taxicab Enforcement Officer may have the vehicle permit suspended or revoked pursuant to the provisions of Section 3.84.110. The licensee shall not allow the vehicle to be put into service until the improper conditions have been corrected; and the taxicab is re-inspected and the taxicab permit is reissued by the City Treasurer.

If for any reason, a taxicab has not been used for service for a period of thirty days or more, the Taxicab Enforcement Officer may, upon seven days written notice to the licensee, revoke the taxicab vehicle permit.

In addition to the provisions of this section, the Director of Airports in accordance with Airport Standard Operating Procedures and policies for commercial ground transportation services may suspend or revoke operating permits issued for the operation of taxicabs while on Airport property.”

SECTION 21. Section 3.84.180 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Additional taxicab vehicles.** Provided that all provisions of this chapter are met, the holder of a taxicab company license may add additional vehicles to those already contained in its license. It shall be the responsibility of the taxicab company licensee to see that a vehicle inspection record is completed for such vehicles and that the inspection record is added to the existing license. Such information shall be forwarded to the City Treasurer. The vehicle permit fee



must also be paid at the time the inspection record is presented for addition to the company license.”

SECTION 22. Section 3.84.190 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“**Taximeters.** The following requirements shall be adhered to for taximeters in taxicabs:

1. The taximeter shall be an instrument or device, mechanical or electronic, which is connected to the taxicab in such a manner that it is capable of measuring the distance upon which the fare to be charged the passenger shall be based, and on the recording of figures on the dial the fare (in dollars and cents) as it accrues.

2. The accuracy of the taximeter shall not be allowed to vary by more than two percent to the prejudice of the passenger, nor more than four percent in favor of the passenger. Taxicab company licensees shall be responsible for the accuracy of taximeters installed in taxicabs operated under their license.

3. All taximeters shall be subject to inspection and test by the Director of Public Works and Utilities. Any taxicab bearing a taximeter found not to conform to the tolerance established in this section may be ordered out of service and not returned to service until the taximeter is re-inspected and conforms to the established tolerance values.

4. The taximeter shall be set according to the schedule of rates posted in the taxicab and as are specified by this chapter. When used for the calculation

of a fare, no other or different fare shall be charged to a passenger than is recorded on the reading face of the taximeter for the trip.

5. Each taximeter shall be so mounted in the taxicab that the amount of fare to be charged shall, at all times, be plainly visible from the inside of the vehicle to all occupants of the vehicle. Every taximeter shall be so attached to the taxicab that it is possible for a person standing outside the vehicle to tell whether the taximeter is in use or not. Between the hours of sunset and sunrise, the dial of the taximeter shall be illuminated whenever it is in use.

6. Taximeters shall be inspected at least once a year or as often as necessary, by the Director of Public Works and Utilities and following testing and inspecting any meter, the company licensee shall seal the same. Meters will be tested and calibrated at the time of issuance or renewal of a vehicle permit or at least once a year by the Director of Public Works and Utilities. It is unlawful for any person to break the seal on a taximeter or to tamper with the taximeter in any manner, or to knowingly change the calculation rate to any rate other than as provided by this chapter, except that such seal may be broken for the sole purpose of repairing the taximeter. A vehicle may be returned to service following repairs of the taximeter but must be re-inspected by the Director of Public Works and Utilities and the taximeter sealed no later than five days from the date of such repair. A re-inspection fee of twenty-five dollars (\$25.00) shall be assessed for any re-inspections of the taximeter required by this section.

7. It is unlawful for any person operating a taxicab in the city equipped with a taximeter and for which a metered fare is applicable to fail to

have the meter in operation while carrying any person other than the driver or student driver thereof, the owner, or its authorized agent or employee, or any member of the police department while on duty and in uniform.

8. The taximeter shall be set in operation at the time a passenger enters the taxicab and be stopped when the taxicab is halted to discharge such passenger; provided, that no waiting time shall be charged for the time consumed by unavoidable traffic delay.”

SECTION 23. Section 3.84.200 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Taxicab driver's license required.** (a) It shall be unlawful for any person to act as the driver of a taxicab in the city without first having secured a Taxicab driver’s license therefore and having in his or her possession at all times, a valid State of Kansas, Class C driver’s license. It shall also be the responsibility of the taxicab company licensee to assure that no driver is allowed to operate a taxicab, in service, without holding and displaying a valid taxicab driver's license as specified in this chapter.

(b) A taxicab driver’s license may be issued to qualified applicants upon the payment of fifteen dollars (\$15.00) plus the costs of investigation. If the taxicab driver’s license has been revoked, no new license shall be issued for a period of two years following the revocation. A ten dollar (\$10) fee shall be charged for all replacement taxicab driver licenses.”

SECTION 24. Section 3.84.210 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Taxicab driver's license application--Information to be given.**

(a) A taxicab driver's license shall be applied for in writing on such forms as the Treasurer may provide and contain such information as may be required, including the following:

(1) The name, residential address, telephone number and date of birth of the applicant.

(2) The type(s) of vehicle(s) which the applicant will drive under the license.

(3) Whether the applicant has been licensed as a taxicab driver and if so, when, and by what municipality or state, and whether such license has been revoked or suspended, and the date thereof;

(4) The number of times, dates and places, within the last five years, the applicant has been arrested or convicted for traffic violations, driving under the influence of alcohol or drugs and/or leaving the scene of an accident;

(5) Whether the applicant has been convicted of a felony within the last five years;

(6) Whether the applicant is now or has ever been registered as a sex offender with any federal, state, county or local government;

(7) The applicant shall furnish a copy of his/her valid Kansas Class C driver's license.

(8) The City Treasurer shall photograph the applicant. Such photograph will be attached to the applicant's license. Photographs are to be re-taken no less than every six years.

(9) The applicant shall submit proof of attendance of a customer service class approved by the City Treasurer or enrollment in a customer service class. Such class must be attended within twenty-four months prior to the date of the application, or within ninety (90) days following the application date."

SECTION 25. Section 3.84.215 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**"Criminal background investigation.** All applicants for a taxi driver's license will undergo a criminal background and driver's license check. The City Treasurer shall collect background check fees of ten dollars (\$10.00) from all applicants."

SECTION 26. Section 3.84.220 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Taxicab driver's license qualifications.** (a) Every applicant for a taxicab driver's license shall:

- (1) Be at least 18 years of age;
  - (2) Be able to adequately speak and understand the English language so as to perform the duties of a taxicab driver;
  - (3) Be clean and neat in dress and person, and not addicted to the use of intoxicating liquor or drugs;
- (b) A taxicab driver's license shall not be issued to any person who:

(1) Has been found guilty of, pleaded guilty to or been convicted of a felony (federal or any state) within five years of the application.

(2) Is now or has ever been registered as a sexual offender with any state, county or local government.

(3) Within five years of the date of application has been found guilty of, pleaded guilty to or been convicted of a violation of federal, state law or a traffic ordinance of any city involving leaving the scene of a motor vehicle accident or driving under the influence of alcohol or drugs.

(4) Failed to provide proof of attendance of an approved customer service class within twenty-four months of the date of the application or provide proof of registration in such class scheduled within ninety days from the date of the application. Such training shall include information regarding disability awareness and sensitivity to those individuals with disabilities.

(c) The Taxicab Enforcement Officer shall prepare and administer a written and oral test for new applicants that will test the applicant's:

(1) Knowledge of taxicab and driver requirements contained in applicable codes and regulations.

(2) Knowledge of vehicle safety requirements;

(3) Knowledge of the geography of the city and the area, and knowledge of local public and tourist destinations and attractions.

(d) An applicant who fails the examination may retake the examination once at no additional charge. If the applicant fails the second test or any test thereafter, the person shall not be permitted to retake the test for sixty (60) days after failure, and, for each additional test, the applicant shall pay another application fee.

(e) The written examination is not required for the renewal of a taxicab driver's license unless the applicant's license has expired, been revoked or suspended for a period of more than one year."

SECTION 27. Section 3.84.240 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Taxicab driver's license identification card and issuance--Contents.**

The taxicab driver's license identification card shall be issued after the individual's application has been approved by the City Treasurer. Such card shall be of a form prescribed by the Taxicab Enforcement Officer and shall contain the picture of the driver affixed in such a manner that another picture cannot be substituted therefore without detection. The taxicab driver's license identification card number and its expiration date shall also be shown on the card."

SECTION 28. Section 3.84.250 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Taxicab driver's license replacement when lost--Contents of duplicate--Information to police.** In case of a loss of a driver's license identification card, such driver may file with the City Treasurer a sworn, and notarized, statement of the facts, concerning the loss, and if the City Treasurer is

satisfied that the facts justify the issuing of a replacement taxicab driver's license identification card, he or she shall issue such duplicate license identification card upon payment of a fee of ten dollars. Such duplicate card shall be plainly marked "duplicate," and the number of the original taxicab driver's license identification card shall be furnished to the police department, as well as the number of the duplicate.”

SECTION 29. Section 3.84.300 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Taxicab driver's license--Expiration and renewal--Fees.** All taxicab driver's licenses shall expire twelve months from the date of issuance. For the original or renewal application and issuance of a license, a fee of fifteen dollars shall be paid by the applicant to the City Treasurer. Upon the expiration of the license, the driver shall be required to obtain a new license upon the payment to the City Treasurer of a renewal fee of fifteen dollars. No refund shall be made for any reason whatsoever and no license shall be prorated.”

SECTION 30. Section 3.84.320 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Taxicab driver conduct and standards.** (a) No taxicab driver shall, nor shall any taxicab company licensee knowingly or negligently allow a taxicab driver to:

1. Permit another person to use his taxicab driver's license;



2. Operate any vehicle while under the influence of alcohol or drugs; or in a careless or reckless manner or in a manner contrary to the laws of the city or the state;
3. Use a taxicab vehicle in the commission of any crime;
4. Use profane or obscene language while operating a taxicab;
5. Smoke or chew tobacco while inside the taxi;
6. Charge a fare higher than that authorized by this chapter or defraud passenger in any way;
7. Be discourteous to a passenger or fail to accede to a passenger's reasonable requests;
8. Drive a passenger to his destination by any other than the most direct route, unless requested to do so by the passenger, or allowed to because of the type of service involved;
9. Refuse or neglect to carry any orderly person anywhere in the city, unless previously engaged or unable to do so;
10. Solicit business in any way other than in a normal tone of voice while seated in or standing adjacent to a taxicab;
11. Work any excessive length of time so as to impair the safe operation of a vehicle.
12. Solicit business for any hotel, or to attempt to divert patronage from one hotel to another.

13. Sell intoxicating liquor, drugs or solicit or participate in any immoral or illegal act or use the vehicle for any purpose other than the transporting of passengers, messages or packages.

14. Sleep in their vehicles, or play loud music while their vehicle is occupying a taxicab stand or zone.

15. Permit unauthorized nonpaying passengers to ride in their taxicab.

16. Refuse when requested or required, to assist a passenger to enter the taxicab and to load and unload all luggage, except that a taxicab driver shall not be required to lift a passenger or items weighing more than fifty (50) pounds.

17. Fail to operate his or her taxicab in accordance with the laws of the State of Kansas and the City of Wichita, and without due regard for the safety convenience and comfort of passengers and the general public.

18. Fail to maintain their personal appearance by being neat and clean in dress and person.

19. Fail to keep clothing in good repair, free of rips, tears and stains.

20. Fail to wear foot wear at all times.

21. The following articles of clothing, when worn as outer garments are prohibited:

Underwear, tank tops, swimwear, body shirts, trunks, or similar attire.

22. Fail to, prior to the beginning of each shift and at the end of each shift, inspect the taxicab to make sure that all equipment on the vehicle is operating properly and that there is no major body damage to the cab. All

equipment defects or body damage shall immediately be reported to the owner and taxicab company.

23. Operate any taxicab which is unsafe or which has major body damage.

24. Solicit for sale any product or service other than ground transportation services as expressly authorized pursuant to this code.

25. Operate any taxicab which is not in a clean and/or sanitary condition.

26. Leave the scene of an accident.

27. Fail to make a full report of an accident to a law enforcement officer.

28. Permit any person to use his or her taxicab driver's license.

29. Refuse to serve a person with a disability who can otherwise use a taxicab;

30. Charge higher fares or fees for carrying individuals with disabilities and their equipment than are charged to other persons;

31. Refuse to provide assistance with the stowing of mobility devices (wheelchairs, walkers, etc.);

32. Refuse to allow service animals to ride with passengers with disabilities.

(b) Taxicab driver licensees shall report to the taxicab enforcement officer within two business days any arrest or conviction for any felony, any crime for which the individual is required to register as a sex offender, or any

state law or a traffic ordinance of any city involving leaving the scene of a motor vehicle accident or driving under the influence of alcohol or drugs.”

SECTION 31. Section 3.84.323 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Receipts for fares.** Every driver of a taxicab, when requested by a .paying passenger, shall give a receipt showing the name of the taxi company, the permit number, the date and the amount of the fare. A sign shall, at all times, be displayed in the taxicab in full view of any passenger, advising them of the availability of a receipt.”

SECTION 32. Section 3.84.330 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Taxicab driver's license--Grounds for suspension or revocation.** The taxicab driver's license provided for in this chapter may be suspended or revoked as provided for in Section 3.84.110, for any reason for which the original license could be denied; or for violation of any other applicable section of this code.

In addition to the provisions of this section, the Director of Airports in accordance with Airport Standard Operating Procedures and policies for commercial ground transportation services may suspend or revoke operating permits issued for the operation of taxicabs while on Airport property.”

SECTION 33. Section 3.84.340 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Taxicab driver's license to be surrendered upon suspension or revocation.** (a) Whenever a taxicab driver's license is suspended or

revoked, the taxicab driver shall surrender his/her taxicab driver's license identification card to the Taxicab Enforcement Officer.

(b) In case of the revocation of any license, no new license shall be issued to such licensee for a period of two years from the date of the revocation.”

SECTION 34. Section 3.84.360 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“**Forms of service.** Under the conditions and requirements specified in this chapter, any person licensed as a taxicab company may utilize any or all vehicles licensed as a taxicab for the provision of any of the following types of service:

1. Exclusive/group ride;
2. Shared ride;
3. Fixed route;
4. Fixed schedule;
5. Package delivery;
6. Emergency vehicle starting;
7. Vehicle unlocking service
8. Message Delivery.

The company licensee shall indicate, at the time of the license application, the type or types of service to be provided and rates charged for each service.”

SECTION 35. Section 3.84.370 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Exclusive/group ride service.** Taxicabs employed in exclusive or group ride service shall use taximeters, as specified in this chapter, for the determination of fares. The fares to be charged for such services shall be those as allowed for in this chapter. No taxicab driver, once a passenger has occupied his taxicab, shall permit any other passenger to occupy or ride in the taxicab unless the passenger first employing the taxicab consents to the acceptance of the additional passenger. In time of emergency or during inclement weather, the company licensee may authorize taxicab drivers to group passengers without the consent of the first passenger if common origins and destinations are involved.”

SECTION 36. Section 3.84.390 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Fixed route and fixed schedule service.** The taxicab company licensee may designate specific vehicles for use in fixed route or fixed schedule forms of service. A licensee who wishes to provide fixed route or fixed schedule service shall:

1. Indicate<sub>1</sub> at the time of the company license application<sub>1</sub> the intention to provide such service(s)<sub>1</sub> or may at any time during the period covered by the license, apply to the Taxicab Enforcement Officer for authorization to provide such service;
2. Indicate in the application the precise route or time schedule to be followed and the days and hours of operation;

3. If approved, display on the sides of the vehicle, for fixed route services, a representation of the route in letters and graphics large enough to be easily read by potential customers. For a fixed schedule service, the primary locations to be served at fixed times, shall be indicated on the sides of the vehicles in letters or graphics large enough to be easily read by potential customers;

4. Apply in writing to the Taxicab Enforcement Officer for approval to alter any fixed route or fixed schedule service;

5. Adhere to the fare requirements specified in this chapter;

6. Not have a fixed route or fixed schedule service approved which is found to be substantially similar to an existing City of Wichita Transit Service bus route or service. The City of Wichita Transit Service shall have the right to make this determination;

7. If approved, not operate vehicles designated for fixed route or fixed schedule service in any other form of service allowed by this chapter.”

SECTION 37. Section 3.84.410 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Operational standards or requirements.** If not in conflict with other requirements of this chapter, or unless not applicable because of the nature of a particular form of service, the following standards or requirements shall apply to all of the forms of service identified in this chapter.

1. No taxicab licensed under this chapter shall at any time carry passengers in excess of its licensed capacity. Further, no taxicab shall be used for any personal or private purposes at any time.

2. Any taxicab may pick up passengers upon signal at any time within the corporate limits of the city, provided no traffic or safety hazard would be created in doing so. In no event, however, may a taxicab driver solicit passengers at a location designated for the loading and unloading of City of Wichita Transit Services bus passengers.

3. Provided that no traffic laws and no traffic or safety hazards are created, taxicab drivers may solicit passengers through cruising or legal parking of a vehicle upon the public streets of the city. In no event shall a driver leave a vehicle in order to solicit a passenger. A specific on-street location may be designated as a 'taxi stand' upon approval by the city traffic engineer"

SECTION 38. Section 3.84.420 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Revocation or suspension of taxicab company license, driver's license or vehicle permit for violations involving service.** If it is found by the Taxicab Enforcement Officer that the preceding provisions involving the forms of service allowed by this chapter are being violated, he or she may revoke or suspend, as it deems appropriate or as specified in any sections of this chapter, the taxicab company license and/or taxicab vehicle permit and/or taxicab driver's license of an offending party. \

(b) In case of the revocation of any license, no new license shall be issued to such licensee for a period of two years from the date of the revocation."



SECTION 39. Section 3.84.430 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Fares -- General maximums and filing rates.** The rate of fare to be charged by every person operating, controlling or driving a licensed taxicab, within the limits of the city, shall be set in accordance with the type of service that the taxicab is providing and the conditions specified in this chapter.

For each form of service specified in this chapter, City Council, shall establish by resolution a maximum rate of fare. A taxicab company licensee may petition the Taxicab Enforcement Officer, who will notify the City Council, at any time of a requested change in a maximum rate of fare.

The actual rate of fare to be charged may be less than or equal to the maximum rate of fare. Each taxicab company licensee shall file with the Taxicab Enforcement Officer the actual rates of fare that shall be charged for all services being provided by the company licensee. Except ~~for~~ as provided in Section 3.84.480, no fare other than those on file with the Taxicab Enforcement Officer may be charged for a service. At all times, the fares posted in a vehicle, on the vehicle, or set on a taximeter shall correspond to those on file with the Taxicab Enforcement Officer.

A taxicab company licensee shall file with the Taxicab Enforcement Officer a notice of the intent to change any rate of fare and provided that the following conditions are met, such fares shall be allowed:

1. The new rate will not exceed the maximum rate of fare established by the City Council;

2. The change in the rate of fare will take effect on the first day of January, April, July or October;

3. No driver will be allowed to charge the new rate of fare or operate a vehicle until the new rates are posted in and on the vehicle and in the event the rate involves use of a taximeter, the taximeter must have been reset to the new rate of fare and inspected and sealed by the Director of Public Works and Utilities.

Notwithstanding the provisions of this section, a taxicab company may establish a minimum rate of ten dollars (\$10.00) for transportation from the Wichita Mid-Continent Airport.”

SECTION 40. Section 3.84.440 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Exclusive/group/shared ride/service rates of fare.** In addition to the preceding requirements, taxicabs and drivers providing exclusive, group ride, and shared ride service shall adhere to the following requirements for rates of fare:

1. The rates used by a company licensee shall be based upon mileage and the same fractions of a mile as are used in setting the maximum rate specified in Section 3.84.430;

2. When employed by any individual or group for exclusive, group or shared ride service, the rates of fare shall be calculated with a taximeter as is specified in Section 3.84.370. However, in those situations indicated below in which the taximeter rate is not applicable, the driver shall inform all passengers of how the fares are to be determined;

3. For an individual, the fare for a trip shall be as indicated on the taximeter;

4. For a trip involving more than one passenger, and provided that the passengers are traveling together, the fare shall be the total of the individual fare plus a surcharge for each additional passenger. In the event that the passengers have dissimilar destinations, the taxicab driver may request prepayment of an estimated fare, with the last passenger exiting the taxicab responsible for the actual fare determined on the taximeter. Any refund or additional charge shall be made to the last passenger;

5. For a trip involving more than one passenger and who are not traveling together, the following conditions shall apply for determining the fare(s):

(a) For passengers having the same origin and destination, or for which no route deviations are involved to serve different destinations, each passenger may be charged the fare determined by the taximeter;

(b) In all other situations, the fare shall be calculated by the dispatcher determining the shortest distance that would be involved for each passenger's trip on an individual basis and applying the appropriate mileage rates to that distance regardless of the actual mileage involved;

6. Waiting time shall mean that time in which a taxicab is waiting commencing four minutes after it arrives at the place of call or that time which a taxicab, at the direction of the passenger, is waiting or not in motion. A fare for

waiting time may be charged and shall be in accordance with the requirements specified in Section 3.84.430;

7. The rates of fare being used shall be painted, in letters at least two inches high, on both sides of the taxicab;

8. No extra charge may be made for transporting any items belonging to a passenger, including personal luggage and aids necessary for transit by disabled persons, if those items will fit within the interior of the taxicab including the trunk, each item can be carried by a single person and all such items can be carried by the passenger or passengers and driver in a single trip to the taxicab.”

SECTION 41. Section 3.84.450 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Shared ride service rates of fare.** In addition to the preceding requirements, taxicabs and drivers providing shared ride service shall adhere to the following requirements for rates of fare:

1. In all ~~other~~ situations involving trips by more than one passenger, the rates of fare for each passenger shall be determined individually;

2. The rates of fare being used shall be painted, in letters at least two inches high, on both sides of the taxicab;

3. No extra charge is to be made for transporting any items belonging to a passenger, including personal luggage and aids necessary for travel by disabled persons, if those items will fit within the interior of the taxicab including the trunk, each item can be carried by a single person and all such items can be carried by the passenger or passengers and driver in a single trip to the taxicab.”

SECTION 42. Section 3.84.480 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Discount fares.** In addition to the rates published under Sections 3.84.440 through 3.84.470, the holder of a taxicab company license may also file discount fares for groups or situations such as, but not limited to: children, senior citizens, frequent users, off-peak use periods and provided that:

1. The Taxicab Enforcement Officer is notified in writing of such rates;
2. The discount rates are less than the approved maximum and also less than the rate actually filed by the company licensee for the type of service involved;
3. The discount rates are made available to all qualified parties without prejudice.”

SECTION 43. Section 3.84.490 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Fares -- Additional requirements and conditions.** The following conditions relating to rates of fare shall also be adhered to:

1. Every taxicab shall have the rates of fare applicable to the types of service available conspicuously posted on a printed notice and in a form approved by the Taxicab Enforcement Officer. These rates shall be the same as those on file with the Taxicab Enforcement Officer.

2. For exclusive, group and shared ride service upon demand, the owner or driver of a taxicab shall give to each person or passenger employing such vehicle a receipt.

3. Every driver of a taxicab shall have the right to demand payment of the regular fare, in advance, and may refuse employment unless so prepaid.

4. It is unlawful for any person engaging a taxicab to refuse to pay any fare lawfully registered in a taximeter or posted in the vehicle. It is unlawful for any person to hire any taxicab with intent to defraud the person from whom it is hired or engaged of the value of taxicab service.”

SECTION 44. Section 3.84.500 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Revocation or suspension of operating permit, driver's license or vehicle license for violations involving fares.** If it is found by the Taxicab Enforcement Officer that the preceding provisions involving rates of fare allowed by this chapter are being violated, it may revoke or suspend, specified in Section 3.84.110, the taxicab company license and/or taxicab vehicle permit and/or taxicab driver's license of an offending party.”

SECTION 45. Section 3.84.520 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Special airport operating requirements.** In addition to the requirements of this code, the Director of Airports, in accordance with Airport Standard Operating Procedures and policies may impose additional rules and regulations for commercial ground transportation services on Airport Property.”

SECTION 46. Section 3.84.530 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Fees for operating at airports.** The Director of Airports may assess commercial ground transportation operator fees for operating to or from Airport property.”

SECTION 47. Section 3.84.570 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Appeal from revocation, suspension or orders authorized under other provisions of this chapter.**

(a) Any applicant or licensee aggrieved by the denial, suspension, or revocation of a license or permit issued pursuant to the terms of this chapter, may file with the City Clerk a written notice of appeal to the City Council within ten (10) business days of the decision by the Taxicab Enforcement Officer or his/her designee. The Notice of Appeal shall specify:

- (1) the name and address of the appellant;
- (2) the date of application;
- (3) the date of the denial, suspension or revocation of the license, permit or application;
- (4) the factual basis for the appeal.

(b) Upon receipt of a complete and timely filed Notice of Appeal, the City Clerk shall schedule a hearing before the City Council, no later than thirty days from the date of the filing of the Notice of Appeal with the City Clerk. Any

appeal shall stay the suspension or revocation of the license until the matter is heard by the City Council.

(c) The City Council may approve the denial, suspension or revocation, overrule the denial, suspension or revocation or modify the decision of the Taxi Enforcement Officer.

(d) The Council's decision may be appealed to the Eighteenth Judicial District Court of the State of Kansas pursuant to K.S.A. 60-2101 and any amendments thereto. Any such appeal to the District Court shall not stay the denial, revocation, modification or suspension of the license by the City Council.”

SECTION 48. Section 3.84.580 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Penalties.** Any person violating any provision of this chapter shall be punished by a fine not to exceed five hundred dollars (\$500.00).”

SECTION 49. The originals of Sections 3.84.010, 3.84.030, 3.84.040, 3.84.050, 3.84.060, 3.84.070, 3.84.080, 3.84.090, 3.84.100, 3.84.110, 3.84.130, 3.84.140, 3.84.150, 3.84.160, 3.84.170, 3.84.180, 3.84.190, 3.84.200, 3.84.210, 3.84.220, 3.84.230, 3.84.240, 3.84.250, 3.84.280, 3.84.300, 3.84.310, 3.84.330, 3.84.340, 3.84.350, 3.84.360, 3.84.370, 3.84.390, 3.84.410, 3.84.420, 3.84.430, 3.84.440, 3.84.450, 3.84.480, 3.84.490, 3.84.500, 3.84.520, 3.84.530 and 3.84.570 of the Code of the City of Wichita, Kansas, are hereby repealed.

SECTION 50. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.



PASSED by the governing body of the City of Wichita, Kansas, this 22nd day of July,  
2012.

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Carl Brewer, Mayor

ATTEST:

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Karen Sublett, City Clerk

Approved as to Form:

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Gary E. Rebenstorf  
Director of Law

First Published in The Wichita Eagle on \_\_\_\_\_

DELINEATED

04/30/2012

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AMENDING SECTIONS 3.84.010, 3.84.030, 3.84.040, 3.84.050, 3.84.060, 3.84.070, 3.84.080, 3.84.090, 3.84.100, 3.84.110, 3.84.130, 3.84.140, 3.84.150, 3.84.160, 3.84.170, 3.84.180, 3.84.190, 3.84.200, 3.84.210, 3.84.220, 3.84.240, 3.84.250, 3.84.300, 3.84.320, 3.84.330, 3.84.340, 3.84.360, 3.84.370, 3.84.390, 3.84.410, 3.84.420, 3.84.430, 3.84.440, 3.84.450, 3.84.480, 3.84.490, 3.84.500, 3.84.520, 3.84.530, 3.84.570, AND 3.84.580 CREATING SECTIONS 3.84.025, 3.84.035, 3.84.105, 3.84.108, 3.84.155, 3.84.215 AND 3.84.323, OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO TAXICABS, AND REPEALING THE ORIGINALS OF SECTIONS 3.84.010, 3.84.030, 3.84.040, 3.84.050, 3.84.060, 3.84.070, 3.84.080, 3.84.090, 3.84.100, 3.84.110, 3.84.130, 3.84.140, 3.84.150, 3.84.160, 3.84.170, 3.84.180, 3.84.190, 3.84.200, 3.84.210, 3.84.220, 3.84.240, 3.84.250, 3.84.280, 3.84.300, 3.84.310, 3.84.320, 3.84.325, 3.84.330, 3.84.340, 3.84.350, 3.84.360, 3.84.370, 3.84.390, 3.84.410, 3.84.420, 3.84.430, 3.84.440, 3.84.450, 3.84.480, 3.84.490, 3.84.500, 3.84.520, 3.84.530, 3.84.570 and 3.84.580 OF THE CODE OF THE CITY OF WICHITA, KANSAS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. Section 3.84.010 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Title.** This chapter ~~of the Code of the city~~ shall be known and may be cited as the 'Wichita Taxicab and Paratransit Code.'"

SECTION 2. Section 3.84.025 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**"Enforcement of Provisions of Code.**      The      Wichita      Police  
Department, the Wichita Department of Public Works and Utilities, the Wichita

Airport Authority, the authorized representatives of such departments, and the Taxicab Enforcement Officer shall be responsible for the enforcement of all provisions of this Code.”

SECTION 3. Section 3.84.030 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Definitions.** As used in this Code, unless the context otherwise requires, the following terms shall have the meaning ascribed:

1. ‘Airport Property’ means any property, facilities and improvements owned, leased and/or under the control and jurisdiction of the Wichita Airport Authority and roads and streets contained thereon.

~~13.~~ 2. ‘Central place of business’ means an office located within the City of Wichita and staffed by personnel responsible for the operations of the taxicab company for which the taxicab operating permit company license is issued.

3. ‘City’ means the City of Wichita, Kansas.

4. ‘City Manager’ means the City Manager of the City or his/her designee.

5. ‘City Treasurer’ means the City Treasurer of the City or his/her designee.

~~14.~~ 6. ‘Cruising’ means the movement continuous or repeated operation over the public streets of a taxicab in search of picking up or solicitation of prospective passengers.

~~3. 'Designated supervisory agency' means the organization identified by the board of city commissioners as being responsible for the implementation and enforcement of these taxicab regulations.~~

7. 'Director of Airports' means the Director of the Wichita Airport or his/her designee.

8. 'Director of Public Works and Utilities' means the Director of the Department of Public Works and Utilities of the City of Wichita, or his/her designee.

9. 'Emergency vehicle starting service' means the use of a taxicab vehicle for the jump starting of another vehicle having a dead or disabled battery.

~~7=~~10. 'Exclusive ride' means exclusive use of a taxicab by one or more passengers at a time having common origins and destinations.

~~10=~~ 11. 'Fixed route' means a specific route along which a taxicab vehicle operates at given times and dates.

~~11=~~ 12. 'Fixed schedule' means taxicab service which is provided in an area by means of vehicles serving specific locations on a given and fixed time schedule.

~~8=~~ 13. 'Group ride' means the use of a taxicab by a group of passengers who generally enter the taxicab at the same location and disembark at the same destination, and pay a single fare for the trip.

14. 'Major body damage' means substantial damage to a vehicle's fender(s), hood, quarter panel(s), door(s) or trunk lid.

15. 'Motor vehicle' means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

16. 'Person' means any individual, firm, association, company, partnership, or other legal entity.

17. 'Police Chief' means the Chief of the Wichita Police Department or his/her designee.

18. 'Radio dispatch' means a two-way system including cellular or wireless telephones capable of handling voice and/or data communications for the purpose of dispatching vehicles and receiving calls from the drivers of such vehicles.

19. 'Rate card' means a card issued by the City Treasurer for display in each taxicab, which contains: a) the rate of fare then in force; b) information advising the passenger of their right to a receipt; c) information regarding passenger's rights pursuant to this code and d) contact information for the Taxicab Enforcement Officer.

~~9.~~ 20. 'Shared ride' means the nonexclusive use of a taxicab by two or more passengers, generally traveling between different points of origin and/or destination, but in the same general direction and each paying an individual fare for the trip.

21. 'Street' means street, avenue, boulevard, thoroughfare, trafficway, alley and any other public way for vehicular travel.

22. 'Taxicab Enforcement Officer' means the individual or his or her designee appointed by the City Manager to administer the provisions of this code.

4- 23. 'Taxicab' means any motor vehicle which ~~meets the standards and criteria of this chapter and which~~ is furnished for hire on a call or demand basis to transport persons, packages or messages where the route traveled and trip destination are controlled by the passenger, and a charge or fare is based upon time and mileage recorded and indicated on a taximeter by a passenger for a fee, except that the following shall not be considered to be taxicabs:

a. Motor buses operated by Wichita Transit of the City of Wichita;

b. Motor buses and motor vehicles engaged exclusively in the transportation of students to and from school, commonly known as school buses;

c. Vehicles operated by a person or company used to transport persons who are the employees, patrons, guests, residents or customers of the person or company, where the provision of such transportation is incidental to the business of such person or company and no fee is charged;

d. Group riding or an arrangement between individuals whereby they pool their private transportation resources either by using the personal automobile of one member of the group with the others contributing to the costs of operating the same, or by rotating the use of

their personal automobiles with joint contributions to the cost by the other members of the group or when any employer provides transportation for its employees and for no other individuals.

e. Vehicles which are licensed as shuttles or limousines by the City of Wichita.

2. ~~24.~~ 'Taxicab company' means any person, company or corporation licensed under the provisions of this chapter who provides ~~such~~ a taxicab service; on a city-wide basis and who holds legal title, or who has the legal right of possession, or the legal right of control of the vehicle or vehicles utilized in providing, the service.

4. ~~25.~~ 'Operating permit Taxicab Company License' means the license under which a person, firm, partnership, association or corporation is authorized to provide taxicab services as defined by this chapter.

6. ~~26.~~ 'Taxicab driver's license' means the license issued under this chapter to an individual to drive a taxicab ~~vehicle~~.

5. ~~27.~~ 'Taxicab Vehicle license permit' means the ~~license permit~~ issued ~~under this chapter for the operation of a vehicle designated for~~ as a taxicab service in the operating permit application.

28. 'Taximeter' means a meter instrument or device attached to a taxicab which measures the distance driven and the waiting time upon which the fare is based."

SECTION 4. Section 3.84.035 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Taxicab Enforcement Officer.** The Taxicab Enforcement Officer is authorized to:

- (a) Administer and enforce the provisions of this code;
- (b) Represent the City and serve as a liaison between the public, licensees and the Wichita hotel and tourism industry in resolving complaints regarding the operation of taxicabs;
- (c) Coordinate with the Police Chief, Director of Public Works and Utilities, and Director of Airports to determine the denial, revocation and/or suspension of licenses and permits.
- (d) Establish, under the authority of the City Manager, any implementing regulations or guidelines which are consistent with the requirements of this code.”

SECTION 5. Section 3.84.040 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“General-entry Taxicab Company Licensing requirements.**

- (a) No person ~~whether acting as owner, principal, agent, employee, lessee or licensee~~ shall conduct business as a taxicab company or allow to be operated upon the streets of the city any taxicab without first having ~~procured from the board of city commissioners an operating permit~~ obtained a license from the City Treasurer as hereinafter provided. A separate commercial ground



transportation operating permit, including the payment of permit fees, may be required by the Director of Airports in accordance with Airport Standard Operating Procedures and policies for commercial ground transportation services on Airport property.

(b) ~~Further, t~~The holder of a taxicab company ~~operating permit~~ license shall be responsible for obtaining and monitoring all taxicab vehicle ~~licenses~~ permits for vehicles ~~available for hire under the authority of the operating permit~~ operated as a taxicab.

(c) ~~The holder of the operating permit~~ A taxicab company licensee shall also be responsible for seeing that all standards and requirements pertaining to ~~a~~ the taxicab company, taxicab vehicle or taxicab driver are ~~adhered to~~ complied with.

SECTION 6. Section 3.84.050 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Requirements for obtaining a taxicab ~~operating permit~~ company license.** (a) Any person, firm, partnership, association or corporation meeting the following requirements ~~or establishing the ability to meet these requirements~~ shall be issued a taxicab ~~operating permit~~ company license as ~~indicated in this chapter.~~ An application for such a ~~permit~~ license, as specified in Section 3.84.070, shall be made to the ~~e~~City manager of the city or his designated representative Treasurer. Such ~~permit~~ application shall be reviewed by the ~~city council~~ Taxicab Enforcement Officer, Director of Public Works and Utilities, and

the Police Chief and, if approved, shall be in effect for one year from the date of being issued issuance. ~~This permit must be renewed annually.~~

(b) ~~Minimum requirements for obtaining a taxicab operating permit~~  
No company license shall be approved unless the applicant meets the following minimum standards. The applicant shall have:

1. A central place of business open and staffed a minimum of eight hours a day, five days a week;

2. A dispatch system capable of receiving calls and dispatching service, and in operation seven days a week ~~and from sixteen hours to twenty-four hours a day;~~

3. Sufficient operational taxicabs to provide service on a city-wide basis, defined here as requiring a minimum of ten vehicles meeting the vehicle standards specified in Section 3.84.140;

4. All taxicabs ~~vehicles~~ shall be so equipped and operated that they may be dispatched by ~~two-way communication~~ radio;

5. The capability to respond to a request for service, inside the corporate limits of the city in a reasonable time;

6. Facilities and personnel sufficient to insure that the requirements of this chapter are met by every taxicab operated by the ~~holder of an operating permit~~ company;

7. Insurance in force ~~sufficient to meet~~ which meets or exceeds the requirements of Section 3.84.100;

8. A supervisor on duty and in charge of taxicab operations all hours during which service is made available by the company;

9. The maintenance of written records of all complaints relating to service and charges of the taxicab drivers and the actions taken by the supervisor or other company personnel as to such complaints.”

SECTION 7. Section 3.84.060 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Right of city manager to verify permit requirements inspection and entry.** (a) ~~The holder of a taxicab operating permit company licensee, and any person employed by the company,~~ shall allow ~~the city manager or his designated representative~~ access and inspection by any official designated to enforce the provisions of this chapter to any records, taxicabs and taximeters considered appropriate for necessary to verifying compliance with the requirements of this code.”

SECTION 8. Section 3.84.070 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Application for taxicab operating permit company license.** All persons applying ~~to the city manager or his designated representative~~ for a taxicab ~~operating permit company licensee~~ shall file with the eCity ~~†Treasurer an sworn~~ application ~~therefor~~ on forms provided by the eCity ~~†Treasurer and containing~~ such information as the city including, but without which includes:

1. The name of the applicant ~~and taxicab company,~~ the names, and addresses, e-mail addresses and telephone numbers of the owners of the company

or in the case of a corporation, the owner of any capital stock thereof, and the address of the central place of business;

2. The number of taxicabs to be operated under the ~~operating permit~~ company license with a complete description of each vehicle including the number of persons it is constructed to carry, the model, the year of production, the ~~motor~~ vehicle identification number and the state license number;

3. Proof that the insurance requirements specified in Section 3.84.100 ~~has~~ have been ~~or will be provided prior to the issuance of the operating permit~~ met;

4. A description of the proposed color scheme, insignia, trade style and/or any other distinguishing characteristics of the proposed vehicle design;

5. ~~Financial references and data sufficient to establish applicant's financial responsibility to fully comply with the provisions of this chapter.~~ Business name, address, e-mail address and telephone number of the taxicab company;

6. Proof that each taxicab is currently registered with the State of Kansas;

7. Whether the applicant, partner, or shareholder has been convicted of a felony within the previous five years, has been or is a registered sex offender, has been convicted of violating any provisions of this code or has ever had a license under this chapter suspended or revoked;

8. A schedule of proposed fees.”

SECTION 9. Section 3.84.080 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Payment of fees.** The application for ~~an operating permit~~ a taxicab company license shall be accompanied by the annual ~~operating permit~~ license fee of two hundred dollars. In addition, an annual vehicle ~~license~~ permit fee of ~~fifty one hundred~~ dollars, ~~specified in Section 3.84.130~~, for each vehicle to be operated by the taxicab company shall accompany the ~~operating permit~~ company license application. ~~In the event the operating permit is denied by the board of commissioners, all fees will be refunded to the applicant. If the application is approved, all fees will be forwarded to the license section, of the city treasurer division of the city.~~

All such fees are annual, and must be paid at the time of the application or application renewal. No license shall be issued unless all licensing fees have been paid to the City Treasurer.

The Director of Airports may establish additional permit fees in accordance with Airport Standard Operating Procedures and policies for commercial ground transportation services on Airport property.”

SECTION 10. Section 3.84.090 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“~~Report on application and application review.~~—**~~Before any application is acted upon, the city manager shall cause an investigation to be made and shall make a written report on the following:~~

- ~~1. The financial responsibility and past experience in the service proposed of applicant for a permit;~~
- ~~2. The number, kind and type of vehicles and equipment to be used;~~  
~~and~~
- ~~3. Such other relevant facts as the city manager may deem advisable or necessary.~~

~~This report and operating permit application shall be forwarded to the board of city commissioners for their action, no later than thirty days from the date the application was filed with the city treasurer. Upon approval by the board of city commissioners of the operating permit application, a permit and all appropriate vehicle licenses shall be issued to the owner or operator of the taxicab company. This operating permit shall not be transferable and any change in the ownership, corporate structure or stock ownership involving ten percent or more of the outstanding stock must be approved by the board of city commissioners prior to the effective date of such transfer.~~

**Eligibility requirements.** No taxicab company license or renewal thereof shall be granted to:

- (a) Any person who within five years immediately preceding the date of making application, has been convicted of or has pleaded guilty to any felony, pursuant to the laws of any city, state or of the United States or shall have forfeited his bond to appear in court to answer charges for any such offense;
- (b) Any partnership, unless all the partners shall be eligible to receive a license as an individual;

(c) Any person, partnership or corporation who, within the two years preceding the application, has had a license revoked under the provisions of this chapter;

(d) A corporation, if any manager, officer or director thereof, would be ineligible, as an individual, to receive a license hereunder for any reason. A corporation, if any stockholder owning in the aggregate more than twenty percent of the stock of such corporation, would be ineligible as an individual for any reason other than age;

(e) Any person who is not at least eighteen years of age;

(f) Any person who at the time of application for renewal of any license issued hereunder would not be eligible for such license upon a first application;

(g) Any person who is now or has ever been registered as a sexual offender with any federal, state, county or local government.”

SECTION 11. Section 3.84.100 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Insurance requirements.** (a) It shall be the responsibility of the ~~holder of a taxicab operating permit~~ company licensee to see that all ~~vehicles~~ taxicabs operated ~~under the authority of that permit by the company~~ meet and maintain the insurance requirements established in this chapter. ~~No vehicle license shall be issued until these conditions are met. Proof of or commitment for such insurance shall be filed with the taxicab operating permit application required by Section 3.84.070.~~

(b) An insurance policy, covering each and every taxicab ~~vehicle~~ owned, operated or leased by the ~~grantee~~ company shall be provided from an insurance company licensed to do business in the state ~~or by an insurance carrier which must qualify either by having and maintaining at all times assets in excess of one million dollars, or which has been engaged as an insurance carrier in the insurance business continually for more than twenty-five years and having the following insurance coverages~~ policy limits:

1. ~~For a vehicle with a passenger capacity, including the driver, of six persons or less a~~ Liability coverage of not less than twenty-five one hundred thousand dollars for the injury to, or death of, one person in any one accident and, ~~subject to the limit for one person, to~~ a limit of not less than ~~fifty~~ three hundred thousand dollars because of injury to, or death of, two or more persons in any one accident, and to a limit of not less than ~~ten~~ fifty thousand dollars for property damages in any one accident or ~~other the~~ minimum limits that may be established by the state or federal laws for the type/size of vehicle or number of passengers transported;

2. ~~For a vehicle with a passenger capacity including the driver, of seven to nine persons, a liability coverage of not less than fifty thousand dollars for the injury to, or death of, one person in any one accident and, subject to the limit for one person, to a limit of not less than one hundred thousand dollars because of injury to, or death of, two or more persons in any one accident, and to a limit of not less than twenty-~~



~~five thousand dollars for property damages in any one accident, or a one hundred thousand dollars combined single limit;~~

~~3. For a vehicle with a passenger capacity of ten or more persons, a liability coverage of not less than one hundred thousand dollars for the injury to, or death of, one person in any one accident and, subject to the limit for one person, to a limit of not less than three hundred thousand dollars because of injury to, or death of, two or more persons in any one accident, and to a limit of not less than twenty-five thousand dollars for property damages in any one accident;~~

~~4. 2. Such policy of insurance shall be in effect and cover each and every taxicab at all times while licensed by the city and shall be effective whether the taxicab at the time of an accident was is being driven by any one of the following persons: the owner, his agent, employee, taxicab driver, lessee or licensee. Such policy of insurance shall list each and every taxicab to be insured under the policy and agree to pay any final judgment against the insured resulting from negligent or reckless operation of any and all such vehicles listed therein. Such policy shall further contain an agreement that upon failure to pay any final judgment of personal injury, including death, rendered against the insured or against any owner, lessee or licensee, or operator of the taxicabs so licensed and insured, the judgment creditor may maintain an action directly against the insurer in any court of proper jurisdiction to compel payment. Nothing contained in the policy or any endorsement thereof for any violation on the~~

~~part of the insured of the provisions of the policy shall release the company from liability under the provisions of this chapter in payment of such judgment.~~

3. Such policy shall be effective until at least twenty days after written notice of such cancellation has been filed with the ~~city clerk~~ Taxicab Enforcement Officer and written acknowledgment of the service of such notice has been given to the company by the ~~city clerk~~ Taxicab Enforcement Officer;

~~5. 4.~~ Such policy shall contain all of the conditions required by the laws of the state and by the insurance commissioner of the state and shall provide for actual notice to the ~~city~~ Taxicab Enforcement Officer of any changes, cancellation or termination to be made in of such policy;

~~6. The city manager, upon approval by the city council, may authorize alternative forms of insurance which substantially meets or exceeds the requirements of the preceding paragraphs of this section."~~

SECTION 12. Section 3.84.105 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**"Duty of taxicab company licensees to enforce compliance by drivers.**

(a) No taxicab company licensee will allow an individual to drive a taxicab, if the licensee knows or has reasonable cause to know that the individual has failed to comply with this code, the rules and regulations established by the Director of Airports on Airport property, the Taxicab Enforcement Officer, or other applicable state or federal law;

(b) Each taxicab company licensee shall insure that no taxicab is operated in an unsafe mechanical condition, with major body damage, or after being ordered out of service by an official designated to enforce the terms and conditions of this code;

(c) Each taxicab company licensee will be responsible to provide overall taxicab service to the public;

(d) Each taxicab company licensee will promptly respond to all complaints by passengers, and other members of the public;

(e) Each taxicab company licensee will promptly respond to all requests for information from the Director of Public Works and Utilities, Chief of Police, Director of Airports or the Taxicab Enforcement Officer or their designees;

(f) The taxicab company licensee shall maintain the company's daily dispatch records for a period of two years. These dispatch records shall be available for inspection at all times by the Taxicab Enforcement Officer or other law enforcement agencies, and officials designated to enforce the terms and conditions of this code."

SECTION 13. Section 3.84.108 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**"Non-transferability of taxicab company license.** No taxicab company license may be sold, assigned, mortgaged or otherwise transferred, nor may there by any modification of ownership as to stock transfer, new or additional partners, by the licensee."

SECTION 14. Section 3.84.110 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Revocation/suspension of taxicab ~~operating permit~~ company license.**

The ~~designated supervisory agency~~ Taxicab Enforcement Officer ~~upon five days notice may suspend or revoke any taxicab operating permit issued under the provisions of this chapter if the holder of such permit has knowingly or because of neglect failed to comply with any of the terms of this chapter.~~ shall provide written notice of the intent to revoke or suspend a taxicab company license by personal service or by certified mail, return receipt requested. The notice shall be sent to the mailing address of the company licensee on file with the City Treasurer. The notice shall provide the effective date of the revocation or suspension of the license. Such notice shall detail the reasons or basis for the revocation or suspension of the license. No revocation or suspension shall be imposed on less than five days notice to the licensee, and shall specify the rights of the licensee to appeal any such denial, revocation or suspension.

In addition to revocation or suspension of an ~~an operating permit~~ company license for failure to comply with the ~~preceding~~ requirements of this chapter, an ~~operating permit~~ license may also be revoked or suspended for the following reasons:

1. The failure of any ~~permit holder~~ company licensee to pay any judgment against ~~him~~ it within ten days after such judgment becomes final and is not superseded by a proper bond on appeal.

2. The cancellation, withdrawal or other termination of insurance ~~as required by Section 3.84.100~~ or failure to maintain the same in accordance with the provisions of this ~~chapter~~ code.

3. The taxicab company licensee has violated any of the provisions of this code or failed to comply with any rule or regulation established by the City of Wichita.

~~3. 4.~~ The failure of a ~~permit holder~~ taxicab company licensee to rectify any violations of this ~~chapter~~ code.

5. The company licensee made a misrepresentation or false statement when obtaining a license, renewal of a license or additional licenses or permits.

6. The company licensee becomes ineligible to obtain a license.

In case of the revocation of any license, no new license shall be issued to such licensee for a period of two years from the date of the revocation.

In addition to the provisions of this section, the Director of Airports may suspend or revoke operating permits for operation of taxicabs while on airport property in accordance with Airport Standard Operating Procedures and policies for commercial ground transportation services.”

SECTION 15. Section 3.84.130 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Taxicab vehicle license permit.** (a) It shall be the responsibility of ~~the holder~~ of a taxicab company ~~operating permit~~ licensee to obtain a taxicab vehicle license permit for each ~~for hire~~ vehicle owned, operated, leased or employed in any way ~~under the authority of the operating permit~~ by the taxicab company licensee. The request for each such license permit shall be made at the time of filing the ~~operating permit~~ company license application ~~specified in Section 3.84.070.~~

(b) For each vehicle license permit requested, an annual fee of ~~fifty~~ one hundred dollars shall be paid at the time of the filing of the ~~operating permit~~ taxicab company license application or renewal application. Such fee shall include costs for inspections required by Section 3.48.150.

(c) All persons applying for a taxicab permit shall file with the City Treasurer an application on forms provided by the City Treasurer which includes:

1. The name of the applicant, business name, address and telephone number of the taxicab company;
2. Make, model, year of production, the vehicle identification number and the state license number of the vehicle;
3. Proof that the insurance requirements specified in Section 3.84.100 have been met; and
4. Proof that the vehicle is currently registered with the State of Kansas.

(d) In addition to the annual fee prescribed by this chapter, the request for vehicle ~~licenses~~ permits shall be accompanied by a vehicle inspection record for each vehicle, as specified in Section 3.84.150. This inspection record must verify that the vehicle for which a ~~license~~ permit is being requested has been inspected and meets all vehicle requirements specified in this chapter. In no event shall a ~~license~~ permit be issued for a vehicle which fails to meet the requirements of this chapter.

(e) Each taxicab must have a permit issued by the City Treasurer. The permit will identify each vehicle by a unique number in accordance with rules and procedure established by the Taxicab Enforcement Officer.”

SECTION 16. Section 3.84.140 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Taxicab vehicle standards.** Vehicles ~~described in Section 3.84.120~~ may be used as taxicabs ~~vehicles~~ provided such motor vehicles ~~also~~ meet the following standards and requirements:

1. The maximum average fleet age of taxicabs ~~vehicles~~ to be operated under any ~~operating permit~~ company license shall be eight years. The average fleet age shall be determined at the time of application for or renewal of an ~~operating permit~~ taxicab company license each year and shall be calculated by adding the ages of all vehicles to be operated under the ~~permit~~ license and dividing the total by the total number of those vehicles. The age of each vehicle shall be determined by subtracting its model year from the current calendar year.

Vehicles added to a fleet or replacing other fleet vehicles during a ~~permit~~ license year shall be no older than the maximum average fleet age allowed for the calendar year in which they are added or replaced.

2. Any vehicle used as a taxicab shall be kept clean, of good appearance, in good repair, properly equipped and in a safe condition. All pollution control equipment and safety devices originally installed by the manufacturer shall also be maintained in good working order. To assure compliance, all such vehicles shall be submitted for inspections as specified in Section 3.84.150.

3. Safety seat belts shall be provided for each passenger the vehicle is constructed to accommodate. Such seat belts shall at all times be maintained in a functional manner and be submitted for inspections as specified in Section 3.84.150.

4. Doors must be provided which open directly into the area of the vehicle used for passenger seating. These doors must be easily opened from the inside by a passenger. For a nonvan type vehicle, a minimum of four doors must be provided. In addition for nonvan type vehicles, windows must also be easily opened from the inside.

5. Every vehicle shall be equipped with sufficient nonglare headlights, proper rear lights and be capable of being properly heated in winter or during periods of cold weather and air-conditioned in summer or during periods of warm weather.



6. Every vehicle shall be well painted and in the color scheme or manner specified in the taxicab company's ~~operating permit~~ license application.

7. Every vehicle shall be equipped with a frame for the proper display of the vehicle ~~license permit~~, the taxicab driver's license, and a ~~fare~~-rate card.

8. Every vehicle shall have plainly painted on each side of the vehicle and the rear of the vehicle, in letters at least two inches in height the name and telephone number of the company operating the taxicab. A number assigned by the company for identifying the vehicle shall also be painted in the same general locations with numerals at least four inches in height. No advertising which covers or obstructs the view of this information shall be allowed.”

SECTION 17. Section 3.84.150 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“**Taxicab vehicle inspections.** (a) To insure compliance with the foregoing provisions, each taxicab ~~vehicle~~ shall be inspected within thirty days prior to ~~licensing~~ receiving a permit and at least once each six months thereafter so long as the vehicle remains ~~licensed~~ permitted as a taxicab. Such inspections shall be conducted by the Director of Public Works and Utilities. The ~~conduct of~~ these inspections shall ~~be the responsibility of the permit holder and~~ include inspections of the vehicle surface, taximeter, motor, mechanical and safety equipment and underbody according to standards specified by the ~~designated supervisory agency~~ Director of Public Works and Utilities. ~~Underbody inspections shall be made by a qualified mechanic appointed by the permit holder.~~ ~~Taximeter inspections shall be made by a person agreed upon by the designated~~

~~supervisory agency and the permit holder.~~ Any vehicle not passing inspection shall not be ~~licensed~~ permitted; or if ~~licensed~~ permitted, shall not be operated as a taxicab until all deficiencies are corrected. A re-inspection fee of \$25.00 will be assessed for the re-inspection of any vehicle which fails an initial inspection. Random inspections of taxicabs ~~vehicles~~ and records shall be made by the ~~designated supervisory agency~~ Director of Public Works and Utilities or its his/her designated representatives to insure compliance with ~~this paragraph~~ the terms and conditions of this code. A company licensee shall make a taxicab available for inspection with at least forty-eight (48) hours notice when ordered to do so by the Director of Public Works and Utilities or the Taxicab Enforcement Officer.

(b) A record of each inspection for every vehicle ~~licensed~~ permitted as a taxicab shall be maintained at the office of the ~~permit holder~~ taxicab company's place of business along with receipts for any repairs made to the vehicle. Each ~~licensed~~ vehicle shall have attached a sticker or decal showing the date of the last inspection. These records shall be maintained by the ~~permit~~ taxicab company holder until the vehicle is no longer ~~licensed~~ utilized as a taxicab.

(c) All complaints regarding taxicab conditions shall be referred to the ~~permit holder~~ taxicab company who shall keep a record of all complaints received and the disposition thereof.

~~Final authority for determining acceptability and serviceability of a vehicle shall rest with the designated supervisory agency which may investigate~~

~~any complaint or cause an inspection of a taxicab by its designated representatives at any time.”~~

SECTION 18. Section 3.84.155 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Inspection Compliance Decal Required.** (a) It shall be unlawful for any person to drive, allow or cause to be driven any taxicab that does not have a current inspection compliance decal affixed.

(b) Such inspection decal shall be placed in the lower corner of the driver’s side front window.

(c) The taxicab company licensee shall remove and return to the Taxicab Enforcement Officer decals of any taxicab which is removed from service.”

SECTION 19. Section 3.84.160 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Nontransferability of taxicab vehicle license permit.** (a) A taxicab vehicle ~~license permit~~ is not transferable. If a taxicab ~~vehicle~~ is sold, has its ownership transferred, or is no longer being used for taxi service, the ~~holder of the operating permit~~ company licensee shall have the vehicle ~~license permit~~ returned to the ~~designated supervisory agency~~ Taxicab Enforcement Officer. All distinctive taxicab markings shall be removed before the vehicle is placed into operation for any other purpose.

~~In the situation that a licensed taxicab is taken out of service as a taxicab and another taxicab is substituted, using the same taxicab number for the one~~

~~taken out of service, upon the surrender of the original license and upon payment of a substitute license fee of five dollars, a new license shall be issued for such substituted taxicab, Which new license shall expire at the end of the license period as provided for in this chapter. Such substituted taxicab must also meet all other requirements of this chapter, including the vehicle age and inspection requirements.”~~

SECTION 20. Section 3.84.170 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Revocation/suspension of taxicab vehicle license permit.** If at any time a taxicab ~~vehicle~~ is found to be in violation of this chapter, the ~~designated supervisory agency~~ Taxicab Enforcement Officer ~~shall~~ may have the vehicle license permit suspended or revoked pursuant to the provisions of Section 3.84.110 and ~~returned to the supervisory agency~~. The ~~holder of the company operating permit licensee~~ shall not allow ~~such a~~ the vehicle to be put into service until the improper conditions have been corrected; and the taxicab ~~vehicle~~ is re-inspected and the taxicab ~~vehicle license permit~~ is reissued by the ~~designated supervisory agency~~ City Treasurer.

If for any reason, a taxicab ~~vehicle~~ has not been used for service for a period of thirty days or more, the ~~designated supervisory agency~~ Taxicab Enforcement Officer may, upon seven days written notice to the licensee, revoke the taxicab vehicle ~~license permit~~.

In addition to the provisions of this section, the Director of Airports in accordance with Airport Standard Operating Procedures and policies for

commercial ground transportation services may suspend or revoke operating permits issued for the operation of taxicabs while on Airport property.”

SECTION 21. Section 3.84.180 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Additional taxicab vehicles.** Provided that all provisions of this chapter are met, the holder of a taxicab ~~operating permit~~ company license may add additional vehicles to those already ~~on file with the operating permit~~ contained in its license application. It shall be the responsibility of the ~~holder of the operating permit~~ taxicab company licensee to see that a vehicle inspection record is completed for such vehicles and that the inspection record is added to the existing ~~operating permit license application and~~. Such information shall be forwarded to the designated supervisory agency City Treasurer. The vehicle ~~license permit~~ fee must also be paid at the time the inspection record is presented for addition to the ~~operating permit~~ company license application.”

SECTION 22. Section 3.84.190 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Taximeters.** ~~If a taxicab vehicle is equipped with a taximeter for the calculation of fares as specified in Section 3.84.440, t~~The following requirements shall be adhered to for taximeters in taxicabs:

1. The taximeter shall be an instrument or device, mechanical or electronic, which is connected to the taxicab in such a manner that it is capable of measuring the distance upon which the fare to be charged the passenger shall be

based, and on the recording of figures on the dial the fare (in dollars and cents) as it accrues.

2. The accuracy of the taximeter shall not be allowed to vary by more than two percent to the prejudice of the passenger, nor more than four percent in favor of the passenger. Taxicab company licensees shall be responsible for the accuracy of taximeters installed in taxicabs operated under their license.

3. All taximeters shall be subject to inspection and test by the Director of Public Works and Utilities. Any taxicab bearing a taximeter found not to conform to the tolerance established in this section may be ordered out of service and not returned to service until the taximeter is re-inspected and conforms to the established tolerance values.

~~3.~~ 4. The taximeter shall be set according to the schedule of rates posted in the taxicab and as are specified by ~~Section 3.84.430~~ this chapter. When used for the calculation of a fare, no other or different fare shall be charged to a passenger than is recorded on the reading face of the taximeter for the trip.

~~4.~~ 5. Each taximeter shall be so mounted in the taxicab that the amount of fare to be charged shall, at all times, be plainly visible from the inside of the vehicle to all occupants of the vehicle. Every taximeter shall be so attached to the taxicab that it is possible for a person standing outside the vehicle to tell whether the taximeter is in use or not. Between the hours of sunset and sunrise, the dial of the taximeter shall be illuminated whenever it is in use.

~~5.~~ 6. Taximeters shall be inspected at least once ~~every six months~~ a year or as often as necessary, by ~~a person agreed upon by the designated supervisory~~

~~agency~~ the Director of Public Works and Utilities and ~~permit holder, who, after~~  
~~following~~ testing and inspecting any meter, the company licensee shall seal the  
same. Meters will be tested and calibrated at the time of issuance or renewal of a  
vehicle permit or at least once a year by the Director of Public Works and  
Utilities. It is unlawful for any person to break the seal ~~placed by the taximeter~~  
~~inspector~~ on a taximeter or to tamper with the taximeter in any manner, or to  
knowingly change the calculation rate to any rate other than as provided by this  
chapter, except that such seal may be broken for the sole purpose of repairing  
~~same~~ the taximeter. A vehicle may be returned to service following repairs of the  
taximeter but must be re-inspected by the Director of Public Works and Utilities  
and the taximeter sealed no later than five days from the date of such repair. A re-  
inspection fee of twenty-five dollars (\$25.00) shall be assessed for any re-  
inspections of the taximeter required by this section.

~~6. 7.~~ It is unlawful for any person operating a taxicab in the city  
equipped with a taximeter and for which a metered fare is applicable to fail to  
have the meter in operation while carrying any person other than the driver or  
student driver thereof, the owner, or its authorized agent or employee, or any  
member of the police department while on duty and in uniform.

~~7. 8.~~ The taximeter shall be set in operation at the time a passenger  
enters the taxicab and be stopped when the taxicab is halted to discharge such  
passenger; provided, that no waiting time shall be charged for the time consumed  
by unavoidable traffic delay.”

SECTION 23. Section 3.84.200 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Taxicab driver's license required.** (a) It shall be unlawful for any person to act as the driver of a taxicab in the city without first having secured a Taxicab driver's license therefore and having in his or her possession at all times, a valid State of Kansas, Class C driver's license. It shall also be the responsibility of the ~~holder of a taxicab operating permit~~ taxicab company licensee to assure that no driver is allowed to operate a ~~vehicle~~ taxicab, in service, without holding and displaying a valid taxicab driver's license as specified in this chapter.

(b) A taxicab driver's license may be issued to qualified applicants upon the payment of fifteen dollars (\$15.00) plus the costs of investigation. If the taxicab driver's license has been revoked, no new license shall be issued for a period of two years following the revocation. A ten dollar (\$10) fee shall be charged for all replacement taxicab driver licenses.”

SECTION 24. Section 3.84.210 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Taxicab driver's license application--Information to be given.**

(a) ~~The~~ A taxicab driver's license ~~required by Section 3.84.200~~ shall be applied for in writing on such forms as the ~~designated supervisory agency of the city~~ Treasurer may provide and contain such information as may be required, including the following:



(1) The name, residential address, telephone number and date of birth of the applicant.

(2) The type(s) of vehicle(s) which the applicant will drive under the license.

(3) Whether ~~or not~~ the applicant has ~~heretofore~~ been licensed as a taxicab driver and if so, when, and by what municipality or state, and whether such license has been revoked or suspended, and the date thereof;

~~(2)~~ (4) The number of times, dates and places, within the last five years, the applicant has been arrested or convicted for traffic violations, driving under the influence of alcohol or drugs and/or leaving the scene of an accident;

~~(3)~~ (5) Whether the applicant has ever been convicted of a felony within the last five years or misdemeanor, giving particulars of each conviction;

(6) Whether the applicant is now or has ever been registered as a sex offender with any federal, state, county or local government;

~~(4) Applicant shall furnish four recent photographs of himself not less than two and one half inches by three inches, and not more than two and one half inches by three and one fourth inches, or submit to photographs by the designated supervisory agency. One of the photographs shall be attached to a copy of the application filed with the police department. One shall be attached to the application filed with the designated supervisory agency. Another shall be fixed to the driver's license identification card. The fourth photograph shall be retained in the driver's file;~~

(5) ~~The applicant shall furnish the names of three reputable persons residing in the city as references.~~

(7) The applicant shall furnish a copy of his/her valid Kansas Class C driver's license.

(8) The City Treasurer shall photograph the applicant. Such photograph will be attached to the applicant's license. Photographs are to be re-taken no less than every six years.

(9) The applicant shall submit proof of attendance of a customer service class approved by the City Treasurer or enrollment in a customer service class. Such class must be attended within twenty-four months prior to the date of the application, or within ninety (90) days following the application date."

SECTION 25. Section 3.84.215 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**"Criminal background investigation.** All applicants for a taxi driver's license will undergo a criminal background and driver's license check. The City Treasurer shall collect background check fees of ten dollars (\$10.00) from all applicants."

SECTION 26. Section 3.84.220 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Taxicab driver's license qualifications.** ~~Every applicant shall be not less than twenty one years of age and shall have resided in the county for at least six months preceding the filing of the application. No license shall be issued to~~

~~any person who is not physically fit to drive a taxicab.~~ (a) Every applicant for a taxicab driver's license shall:

(1) Be at least 18 years of age;

(2) Be able to adequately speak and understand the English language so as to perform the duties of a taxicab driver;

(3) Be clean and neat in dress and person, and not addicted to the use of intoxicating liquor or drugs;

(b) A taxicab driver's license shall not be issued to any person who:

(1) Has been found guilty of, pleaded guilty to or been convicted of a felony (federal or any state) within five years of the application.

(2) Is now or has ever been registered as a sexual offender with any state, county or local government.

(3) Within five years of the date of application has been found guilty of, pleaded guilty to or been convicted of a violation of federal, state law or a traffic ordinance of any city involving leaving the scene of a motor vehicle accident or driving under the influence of alcohol or drugs.

(4) Failed to provide proof of attendance of an approved customer service class within twenty-four months of the date of the application or provide proof of registration in such class scheduled within ninety days from the date of the application. Such training shall include information regarding disability awareness and sensitivity to those individuals with disabilities.

(c) The Taxicab Enforcement Officer shall prepare and administer a written and oral test for new applicants that will test the applicant's:

(1) Knowledge of taxicab and driver requirements contained in applicable codes and regulations.

(2) Knowledge of vehicle safety requirements;

(3) Knowledge of the geography of the city and the area, and knowledge of local public and tourist destinations and attractions.

(d) An applicant who fails the examination may retake the examination once at no additional charge. If the applicant fails the second test or any test thereafter, the person shall not be permitted to retake the test for sixty (60) days after failure, and, for each additional test, the applicant shall pay another application fee.

(e) The written examination is not required for the renewal of a taxicab driver's license unless the applicant's license has expired, been revoked or suspended for a period of more than one year."

SECTION 27. Section 3.84.240 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Taxicab driver's license identification card and issuance--Contents.**

The taxicab driver's license identification card shall be issued after the ~~driver's individual's~~ application ~~form~~ has been ~~fully processed and~~ approved by the ~~designated supervisory agency~~ City Treasurer. Such card shall be of a form prescribed by the ~~designated supervisory agency~~ Taxicab Enforcement Officer

and shall contain the picture of the driver affixed in such a manner that another picture cannot be substituted therefor without detection. The taxicab driver's license identification card number and its expiration date shall also be shown ~~thereon~~ on the card."

SECTION 28. Section 3.84.250 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Taxicab driver's license replacement when lost--Contents of duplicate--Information to police.** In case of a loss of a driver's license identification card, such driver may file with the ~~designated supervisory agency~~ City Treasurer a sworn, and notarized, statement of the facts, concerning the loss, and if the ~~designated supervisory agency~~ City Treasurer is satisfied that the facts justify the issuing of a replacement taxicab driver's license identification card, ~~is~~ he or she shall issue such duplicate license identification card upon payment of a fee of ~~five~~ ten dollars. Such duplicate card shall be plainly marked "duplicate," and the number of the original taxicab driver's license identification card shall be furnished to the police department, as well as the number of the duplicate."

SECTION 29. Section 3.84.300 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Taxicab driver's license--Expiration and renewal--Fees.** All taxicab driver's licenses shall expire ~~on the thirty first day of December of each year~~ twelve months from the date of issuance. For the original or renewal application and issuance of a license, a fee of ~~seven~~ fifteen dollars ~~and fifty cents~~ shall be paid by the applicant to the ~~designated supervisory agency~~ City Treasurer. Upon

the expiration of the license, the driver shall be required to obtain a new license upon the payment to the ~~designated supervisory agency~~ City Treasurer of a renewal fee of ~~five~~ fifteen dollars; ~~provided, that in case the driver shall apply for a renewal license on or before December 20th of each year, no new application shall be required; provided further, however, that before any renewal license is issued, the applicant must secure the approval of the designated supervisory agency upon the requirements provided for in this chapter and new photographs shall be required for proper identification.~~ No refund shall be made for any reason whatsoever and no license shall be prorated.”

SECTION 30. Section 3.84.320 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Taxicab driver conduct and standards.** (a) No taxicab driver shall, nor shall any ~~holder of a taxicab operating permit~~ company licensee knowingly or ~~by neglect~~ negligently allow a taxicab driver to:

1. Permit another person to use his taxicab driver's license;
2. Operate any vehicle while under the influence of ~~intoxicants~~ alcohol or drugs; or in a careless or reckless manner or in a manner contrary to the laws of the city or the state;
3. Use a taxicab vehicle in the commission of any crime;
4. Use profane or obscene language while operating a taxicab ~~vehicle;~~
5. Smoke or chew tobacco ~~without the consent of the passenger while~~ inside the taxi;

6. Charge a fare higher than that authorized by this chapter or defraud passenger in any way;
7. Be discourteous to a passenger or fail to accede to a passenger's reasonable requests;
8. Drive a passenger to his destination by any other than the most direct route, unless requested to do so by the passenger, or allowed to because of the type of service involved;
9. Refuse or neglect to carry any orderly person anywhere in the city, unless previously engaged or unable to do so;
10. Solicit business in any way other than in a normal tone of voice while seated in or standing adjacent to a taxicab;
11. Work any excessive length of time so as to impair the safe operation of a vehicle.
12. Solicit business for any hotel, or to attempt to divert patronage from one hotel to another.
13. Sell intoxicating liquor, drugs or solicit or participate in any immoral or illegal act or use the vehicle for any purpose other than the transporting of passengers, messages or packages.
14. Sleep in their vehicles, or play loud music while their vehicle is occupying a taxicab stand or zone.
15. Permit unauthorized nonpaying passengers to ride in their taxicab.

16. Refuse when requested or required, to assist a passenger to enter the taxicab and to load and unload all luggage, except that a taxicab driver shall not be required to lift a passenger or items weighing more than fifty (50) pounds.

17. Fail to operate his or her taxicab in accordance with the laws of the State of Kansas and the City of Wichita, and without due regard for the safety convenience and comfort of passengers and the general public.

18. Fail to maintain their personal appearance by being neat and clean in dress and person.

19. Fail to keep clothing in good repair, free of rips, tears and stains.

20. Fail to wear foot wear at all times.

21. The following articles of clothing, when worn as outer garments are prohibited:

Underwear, tank tops, swimwear, body shirts, trunks, or similar attire.

22. Fail to, prior to the beginning of each shift and at the end of each shift, inspect the taxicab to make sure that all equipment on the vehicle is operating properly and that there is no major body damage to the cab. All equipment defects or body damage shall immediately be reported to the owner and taxicab company.

23. Operate any taxicab which is unsafe or which has major body damage.



24. Solicit for sale any product or service other than ground transportation services as expressly authorized pursuant to this code.

25. Operate any taxicab which is not in a clean and/or sanitary condition.

26. Leave the scene of an accident.

27. Fail to make a full report of an accident to a law enforcement officer.

28. Permit any person to use his or her taxicab driver's license.

29. Refuse to serve a person with a disability who can otherwise use a taxicab;

30. Charge higher fares or fees for carrying individuals with disabilities and their equipment than are charged to other persons;

31. Refuse to provide assistance with the stowing of mobility devices (wheelchairs, walkers, etc.);

32. Refuse to allow service animals to ride with passengers with disabilities.

(b) Taxicab driver licensees shall report to the taxicab enforcement officer within two business days any arrest or conviction for any felony, any crime for which the individual is required to register as a sex offender, or any state law or a traffic ordinance of any city involving leaving the scene of a motor vehicle accident or driving under the influence of alcohol or drugs. “

SECTION 31. Section 3.84.323 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Receipts for fares.** Every driver of a taxicab, when requested by a .paying passenger, shall give a receipt showing the name of the taxi company, the permit number, the date and the amount of the fare. A sign shall, at all times, be displayed in the taxicab in full view of any passenger, advising them of the availability of a receipt.”

SECTION 32. Section 3.84.330 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Taxicab driver's license--Grounds for suspension or revocation.** The taxicab driver's license provided for in this chapter may be suspended or revoked by the designated supervisory agency as provided for in Section 3.84.110, for any reason for which the original license could be denied, or for violation of the conditions specified in Section 3.84.320 or of any other applicable section of this code, and for any of the reasons listed below. For the reasons listed below the terms of a revocation or suspension shall be as indicated, for any other reason the designated supervisory agency shall have the authority to determine such terms.

1. A taxicab driver's license shall be revoked, and shall not be reissued for any violation specified in Section 3.84.280.

2. A taxicab driver's license shall be suspended for a period of not less than six months nor more than twelve months for:

2.1. Conviction of a violation of any federal or state law not provided for in Section 3.84.280 of this chapter;

~~2.2. Conviction, in the police court, of drunkenness while on duty, in driving a taxicab while under the influence of intoxicating liquor or drugs, or for possession of liquor or drugs while operating a taxicab;~~

~~2.3. Leaving the scene of an accident;~~

~~2.4. Failure to make a full report of an accident to the police department;~~

~~2.5. Permitting any other person to use his taxicab driver's license;~~

~~2.6. Obliterating or erasing any official entry on his license identification card.~~

~~3. A taxicab driver's license shall be suspended for a period of not less than fourteen days nor more than twelve months for:~~

~~3.1. Conviction of a third major traffic violation during any one license year. A 'major traffic violation' is defined to include: speeding, reckless driving, nonobservance of lights failure to obey traffic control devices or signs, making a left or U turn where not permitted or driving on the wrong side of the street.~~

~~4. A taxicab driver's license shall be suspended for a period of not less than ten days nor more than thirty days for:~~

~~4.1. Charging a rate of fare greater or less than, the one posted in the taxicab or as allowed in Section 3.84.430 of this chapter;~~

~~4.2. Failing to keep the fare rate cards in a conspicuous place on the taxicab in type which is easily legible.~~

~~5. A taxicab driver's license may be suspended for a period of not more than ninety days:~~

~~5.1. For repeated convictions of traffic violations.~~

~~6. A taxicab driver's license may be revoked if, after notice and a hearing, in the judgment of the designated supervisory agency a driver is not emotionally or physically suited for such occupation.~~

In addition to the provisions of this section, the Director of Airports in accordance with Airport Standard Operating Procedures and policies for commercial ground transportation services may suspend or revoke operating permits issued for the operation of taxicabs while on Airport property.”

SECTION 33. Section 3.84.340 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Taxicab driver's license to be surrendered upon suspension or revocation.** (a) Whenever a taxicab driver's license is suspended or revoked, ~~the designated supervisory agency~~ taxicab driver shall surrender his/her ~~shall take up the taxicab driver's license identification card and record the reason for such revocation or suspension and the term thereof~~ to the Taxicab Enforcement Officer.

(b) In case of the revocation of any license, no new license shall be issued to such licensee for a period of two years from the date of the revocation.”

SECTION 34. Section 3.84.360 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Forms of service.** Under the conditions and requirements specified in this chapter, ~~the holder of a taxicab operating permit~~ any person licensed as a taxicab company may utilize any or all vehicles; licensed as a taxicab ~~under the operating permit~~ for the provision of any of the following types of service:

1. Exclusive/group ride;
2. Shared ride;
3. Fixed route;
4. Fixed schedule;
5. Package delivery;
6. Emergency vehicle starting;
7. Vehicle unlocking service
8. Message Delivery.

The ~~holder of an operating permit~~ company licensee shall indicate, at the time of the ~~operating permit~~ license application, the type or types of service to be provided ~~by vehicles operated under the permit's authority. Upon notice to and approval of the designated supervisory agency, the holder of an operating permit may revise the types of service being provided~~ and rates charged for each service.”

SECTION 35. Section 3.84.370 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Exclusive/group ride service.** Taxicabs ~~vehicles~~ employed in exclusive or group ride service shall use taximeters, as specified in ~~Section 3.84.440~~ this chapter, for the determination of fares. The fares to be charged for such services shall be those as allowed for in ~~Section 3.84.440~~ of this chapter. No taxicab driver, once a passenger has occupied his taxicab, shall permit any other passenger to occupy or ride in the taxicab unless the passenger first employing the taxicab ~~shall~~ consents to the acceptance of the additional passenger. In time of emergency or during inclement weather, the ~~holder of an operating permit company licensee~~ may authorize taxicab drivers to group passengers without the consent of the first passenger if common origins and destinations are involved.”

SECTION 36. Section 3.84.390 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Fixed route and fixed schedule service.** The ~~holder of a taxicab company operating permit licensee~~ may designate specific vehicles for use in fixed route or fixed schedule forms of service. ~~An operating permit holder licensee~~ who wishes to provide fixed route or fixed schedule service shall:

1. Indicate<sub>2</sub> at the time of the ~~operating permit~~ company license application<sub>2</sub> the intention to provide such service(s)<sub>2</sub> or may at any time during the period covered by ~~an operating permit~~ the license, apply to the ~~designated supervisory agency~~ Taxicab Enforcement Officer for authorization to provide such service;

2. Indicate in the application the precise route or time schedule to be followed and the days and hours of operation;

3. If approved, display on the sides of the vehicle, for fixed route services, a representation of the route in letters and graphics large enough to be easily read by potential customers. For a fixed schedule service, the primary locations to be served at fixed times, shall be indicated on the sides of the vehicles in letters or graphics large enough to be easily read by potential customers;

4. Apply in writing to the ~~designated supervisory agency~~ Taxicab Enforcement Officer for approval to alter any fixed route or fixed schedule service;

5. Adhere to the fare requirements specified in ~~Section 3.84.460~~ this chapter;

6. Not have a fixed route or fixed schedule service approved which is found to be substantially similar to an existing ~~Metropolitan~~ City of Wichita Transit Authority Service bus route or service. The ~~Metropolitan~~ City of Wichita Transit Authority Service shall have the right to make this determination;

7. If approved, not operate vehicles designated for fixed route or fixed schedule service in any other form of service allowed by this chapter.”

SECTION 37. Section 3.84.410 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Operational standards or requirements.** If not in conflict with other requirements of this chapter, or unless not applicable because of the nature of a

particular form of service, the following standards or requirements shall apply to all of the forms of service identified in this chapter.

1. No taxicab licensed under this chapter shall at any time carry passengers in excess of its licensed capacity. Further, no taxicab shall be used for any personal or private purposes at any time.

2. Any taxicab may pick up passengers upon signal at any time within the corporate limits of the city, provided no traffic or safety hazard would be created in doing so. In no event, however, may a taxicab driver solicit passengers at a location designated for the loading and unloading of ~~Metropolitan~~ City of Wichita Transit Authority Services bus passengers.

3. Provided that no traffic laws and no traffic or safety hazards are created, taxicab drivers may solicit passengers through cruising or legal parking of a vehicle upon the public streets of the city. In no event shall a driver leave a vehicle in order to solicit a passenger. A specific on-street location may be designated as a 'taxi stand' upon approval by the city traffic engineer ~~and designated supervisory agency."~~

SECTION 38. Section 3.84.420 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Revocation or suspension of ~~operating permit~~ taxicab company license, driver's license or vehicle license permit for violations involving service.** If it is found by the ~~designated supervisory agency~~ Taxicab Enforcement Officer that the preceding provisions involving the forms of service allowed by this chapter are being violated, ~~it~~ he or she may revoke or suspend, as



it deems appropriate or as specified in ~~either~~ any sections of this chapter, the ~~company operating permit~~ taxicab company license and/or taxicab vehicle license permit and/or taxicab driver's license of an offending party. \

(b) In case of the revocation of any license, no new license shall be issued to such licensee for a period of two years from the date of the revocation.”

SECTION 39. Section 3.84.430 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Fares -- General maximums and filing rates.** The rate of fare to be charged by every person operating, controlling or driving a licensed taxicab, ~~either within the limits of the city or outside the city, and within such distances as are established and fixed by statutes of the state,~~ shall be set in accordance with the type of service that the taxicab is providing and the conditions specified in this chapter.

For each form of service specified in this chapter, ~~after a notice and open public hearing the board of city commissioners~~ City Council, ~~by resolution~~ shall establish by resolution a maximum rate of fare. A ~~holder of an operating permit~~ taxicab company licensee may petition the ~~board of city commissioners~~ Taxicab Enforcement Officer, who will notify the City Council, at any time ~~for any desired~~ of a requested change in a maximum rate of fare.

The actual rate of fare to be charged may be less than or equal to the maximum rate of fare. Each ~~permit holder~~ taxicab company licensee shall file with the ~~designated supervisory agency~~ Taxicab Enforcement Officer the actual rates of fare that shall be charged for all services being provided by the ~~operating~~

~~permit holder~~ company licensee. Except for as provided in Section 3.84.480, no fare other than those on file with the ~~designated supervisory agency~~ Taxicab Enforcement Officer may be charged for a service. At all times, the fares posted in a vehicle, on the vehicle, or set on a taximeter shall correspond to those on file with the Taxicab Enforcement Officer.

A ~~holder of an operating permit~~ taxicab company licensee ~~may~~ shall file with the ~~designated supervisory agency~~ Taxicab Enforcement Officer a notice of the intent to change any rate of fare and provided that the following conditions are met, such fares shall be allowed ~~by the designated supervisory agency~~:

1. The new rate will not exceed the maximum rate of fare established by the ~~board of city commissioners~~ City Council;
2. The change in the rate of fare will take effect on the first day of January, April, July or October;
3. No driver will be allowed to charge the new rate of fare or operate a vehicle until the new rates are posted in and on the vehicle and in the event the rate involves use of a taximeter, the taximeter must have been reset to the new rate of fare and inspected and sealed by the ~~designated supervisory agency~~ Director of Public Works and Utilities.

Notwithstanding the provisions of this section, a taxicab company may establish a minimum rate of ten dollars (\$10.00) for transportation from the Wichita Mid-Continent Airport.”

SECTION 40. Section 3.84.440 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Exclusive/group/shared ride/service rates of fare.** In addition to the preceding requirements, taxicabs and drivers providing exclusive, ~~and~~ group ride, and shared ride service shall adhere to the following requirements for rates of fare:

1. The rates used by a ~~permit holder~~ company licensee shall be based upon mileage and the same fractions of a mile as are used in setting the maximum rate specified in Section 3.84.430;

2. When employed by any individual or group for exclusive, group or shared ride service, the rates of fare shall be calculated with a taximeter as is specified in Section 3.84.370. However, in those situations indicated below in which the taximeter rate is not applicable, the driver shall inform all passengers of how the fares are to be determined;

3. For an individual, the fare for a trip shall be as indicated on the taximeter;

4. For a trip involving more than one passenger, and provided that the passengers are traveling together, the fare shall be the total of the individual fare plus a surcharge for each additional passenger. In the event that the passengers have dissimilar destinations, the taxicab driver may request prepayment of an estimated fare, with the last passenger exiting the taxicab responsible for the actual fare determined on the taximeter. Any refund or additional charge shall be made to ~~this~~ the last passenger;

5. For a trip involving more than one passenger and who are not traveling together, the following conditions shall apply for determining the fare(s):

~~5.1.~~ (a) For passengers having the same origin and destination, or for which no route deviations are involved to serve different destinations, each passenger may be charged the fare determined by the taximeter;

~~5.2.~~ (b) In all other situations, the fare shall be calculated by the dispatcher determining the shortest distance that would be involved for each passenger's trip on an individual basis and applying the appropriate mileage rates to that distance regardless of the actual mileage involved;

6. Waiting time shall mean that time in which a taxicab is waiting commencing four minutes after it arrives at the place of call or that time which a taxicab, at the direction of the passenger, is waiting or not in motion. A fare for waiting time may be charged and shall be in accordance with the requirements specified in Section 3.84.430;

7. The rates of fare being used shall be painted, in letters at least two inches high, on both sides of the taxicab;

8. No extra charge ~~is to~~ may be made for transporting any items belonging to a passenger, including personal luggage and aids necessary for transit by disabled persons, if those items will fit within the interior of the taxicab including the trunk, each item can be carried by a single person and all such items can be carried by the passenger or passengers and driver in a single trip to the taxicab.”

SECTION 41. Section 3.84.450 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Shared ride service rates of fare.** In addition to the preceding requirements, taxicabs and drivers providing shared ride service shall adhere to the following requirements for rates of fare:

~~1. All shared ride fares shall be determined by the use of zones. The designated supervisory agency shall be responsible for determining the size of these zones and the drawing of a map depicting the zones for the Wichita metropolitan area;~~

~~2. The designated supervisory agency shall also prepare a table showing the minimum number of zones that should be crossed in traveling between any two zones, and this minimum shall be used by a driver for determining the fare to be charged regardless of the actual number of zones crossed;~~

~~3. For a trip involving more than one passenger and provided that the passengers are traveling together and have the same origin and destination, the total fare shall be equal to that charged for a single passenger plus a surcharge per additional passenger;~~

~~4.~~ 1. In all ~~other~~ situations involving trips by more than one passenger, the rates of fare for each passenger shall be determined individually;

~~5.~~ 2. The rates of fare being used shall be painted, in letters at least two inches high, on both sides of the taxicab;

~~6-3.~~ No extra charge is to be made for transporting any items belonging to a passenger, including personal luggage and aids necessary for travel by disabled persons, if those items will fit within the interior of the taxicab including the trunk, each item can be carried by a single person and all such items can be carried by the passenger or passengers and driver in a single trip to the taxicab.”

SECTION 42. Section 3.84.480 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“**Special Discount fares.** In addition to the rates of fare published under Sections 3.84.440 through 3.84.470, the holder of a taxicab ~~operating permit~~ company license may also file ~~special or~~ discount fares for groups or situations such as, but not limited to: children, senior citizens, frequent users, off-peak use periods and provided that:

1. The ~~designated supervisory agency~~ Taxicab Enforcement Officer ~~approves~~ is notified in writing of such rates;
2. The ~~special or~~ discount rates are less than the approved maximum and also less than the rate actually filed by the ~~operating permit holder~~ company licensee for the type of service involved;
3. The ~~special or~~ discount rates are made available to all qualified parties without prejudice.”

SECTION 43. Section 3.84.490 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“**Fares -- Additional requirements and conditions.** The following conditions relating to rates of fare shall also be adhered to:

1. Every ~~vehicle~~ taxicab shall have the rates of fare applicable to the types of service available conspicuously posted on a printed notice and in a form approved by the ~~designated supervisory agency~~ Taxicab Enforcement Officer. These rates shall be the same as those on file with the ~~designated supervisory agency~~ Taxicab Enforcement Officer.

2. For exclusive, group and shared ride service upon demand, the owner or driver of a taxicab shall give to each person or passenger employing such vehicle a receipt.

3. Every driver of a taxicab shall have the right to demand payment of the regular fare, in advance, and may refuse employment unless so prepaid.

4. It is unlawful for any person engaging a taxicab to refuse to pay any fare lawfully registered in a taximeter or posted in the vehicle. It is unlawful for any person to hire any taxicab with intent to defraud the person from whom it is hired or engaged of the value of taxicab service.”

SECTION 44. Section 3.84.500 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Revocation or suspension of operating permit, driver's license or vehicle license for violations involving fares.** If it is found by the ~~designated supervisory agency~~ Taxicab Enforcement Officer that the preceding provisions involving rates of fare allowed by this chapter are being violated, it may revoke or suspend, ~~as it deems appropriate or as specified in other sections of this chapter~~ Section 3.84.110, the taxicab company ~~operating permit~~ license

and/or taxicab vehicle ~~license~~ permit and/or taxicab driver's license of an offending party.”

SECTION 45. Section 3.84.520 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Special airport operating requirements.** ~~Upon notification to the designated supervisory agency, the Wichita airport authority may require taxicab vehicles operating to and/or from the airports to adhere to reasonable rules and regulations with respect to the use of the airports, terminal buildings and related facilities.~~ In addition to the requirements of this code, the Director of Airports, in accordance with Airport Standard Operating Procedures and policies may impose additional rules and regulations for commercial ground transportation services on Airport Property.”

SECTION 46. Section 3.84.530 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Fees for operating at airports.** ~~The Wichita airport authority may assess taxicab companies, and/or taxicab vehicles a reasonable fee for operating from the airport(s).~~ The Director of Airports may assess commercial ground transportation operator fees for operating to or from Airport property.”

SECTION 47. Section 3.84.570 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Appeal from revocation, suspension or orders authorized under other provisions of this chapter.** ~~An order of revocation or suspension or any order entered by an enforcement official under the provisions of this chapter,~~



~~not otherwise provided for, shall be subject to appeal to the governing body of the city. Such appeal shall be in writing setting forth with sufficient particularity the order or orders appealed from and the reasons why such order or orders should be reviewed. An aggrieved party shall have the right to be heard and to present evidence at the hearing set for such purpose.~~

(a) Any applicant or licensee aggrieved by the denial, suspension, or revocation of a license or permit issued pursuant to the terms of this chapter, may file with the City Clerk a written notice of appeal to the City Council within ten (10) business days of the decision by the Taxicab Enforcement Officer or his/her designee. The Notice of Appeal shall specify:

- (1) the name and address of the appellant;
- (2) the date of application;
- (3) the date of the denial, suspension or revocation of the license, permit or application;
- (4) the factual basis for the appeal.

(b) Upon receipt of a complete and timely filed Notice of Appeal, the City Clerk shall schedule a hearing before the City Council, no later than thirty days from the date of the filing of the Notice of Appeal with the City Clerk. Any appeal shall stay the suspension or revocation of the license until the matter is heard by the City Council.

(c) The City Council may approve the denial, suspension or revocation, overrule the denial, suspension or revocation or modify the decision of the Taxi Enforcement Officer.

(d) The Council's decision may be appealed to the Eighteenth Judicial District Court of the State of Kansas pursuant to K.S.A. 60-2101 and any amendments thereto. Any such appeal to the District Court shall not stay the denial, revocation, modification or suspension of the license by the City Council."

SECTION 48. Section 3.84.580 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Penalties.** ~~Any person owning or operating, and any driver or operator of a taxicab or other vehicle not licensed or equipped in accordance with the provisions of this chapter, or of a taxicab the license of which has been revoked or whose license is at the time suspended, who solicits or conveys passengers for hire in the city shall, upon conviction thereof, violating any provision of this chapter shall be punished by a fine not to exceeding one five hundred dollars (\$500.00) and shall stand committed to the city jail until such fine and the cost of prosecution are paid.~~

~~Any person violating any provision of this chapter for which no punishment is specifically provided, shall be punished by a fine of fifty dollars and shall stand committed to the city jail until such fine and costs of prosecution are paid.~~

~~Each and every day of operation of a taxicab in violation of the provisions of this chapter shall constitute a separate offense and be punished as such."~~

SECTION 49. The originals of Sections 3.84.010, 3.84.030, 3.84.040, 3.84.050, 3.84.060, 3.84.070, 3.84.080, 3.84.090, 3.84.100, 3.84.110, 3.84.130, 3.84.140, 3.84.150, 3.84.160, 3.84.170, 3.84.180, 3.84.190, 3.84.200, 3.84.210, 3.84.220, 3.84.230, 3.84.240,

3.84.250, 3.84.280, 3.84.300, 3.84.310, 3.84.330, 3.84.340, 3.84.350, 3.84.360, 3.84.370, 3.84.390, 3.84.410, 3.84.420, 3.84.430, 3.84.440, 3.84.450, 3.84.480, 3.84.490, 3.84.500, 3.84.520, 3.84.530 and 3.84.570 of the Code of the City of Wichita, Kansas, are hereby repealed.

SECTION 50. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.

PASSED by the governing body of the City of Wichita, Kansas, this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Carl Brewer, Mayor

ATTEST:

\_\_\_\_\_  
Karen Sublett, City Clerk

Approved as to Form:

\_\_\_\_\_  
Gary E. Rebenstorf  
Director of Law

City of Wichita  
City Council Meeting  
May 15, 2012

**TO:** Mayor and City Council

**SUBJECT:** ZON2012-00009 – City zone change from NO Neighborhood Office with PO-170 to LC Limited Commercial (“LC”) and GO General Office (“GO”) with amendments to PO-170 for a bank with drive through and office development; generally located south of East 21<sup>st</sup> Street North and west of North Cranbrook. (District II)

**INITIATED BY:** Metropolitan Area Planning Department

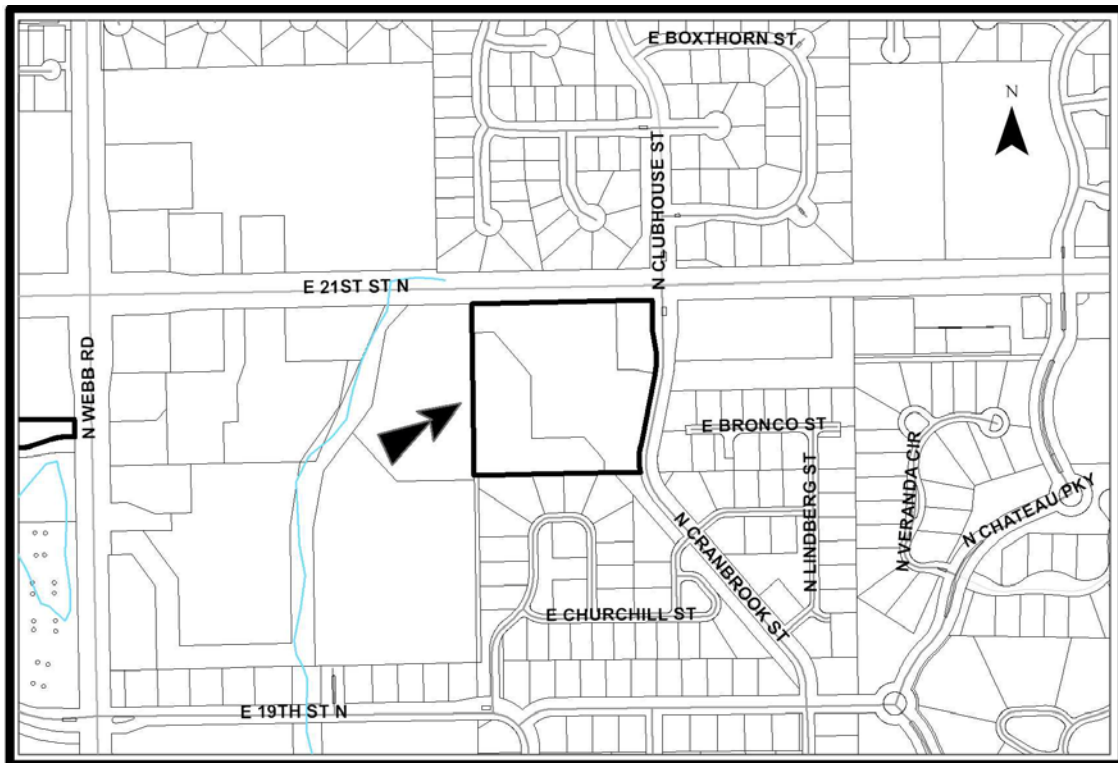
**AGENDA:** Planning (Non-consent)

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**MAPC Recommendation:** Approve the applicant’s request with additional site plan review requirement (6-4-1).

**DAB II Recommendation:** Approve the applicant’s request with additional site plan review requirement (7-1).

**MAPD Staff Recommendation:** Deny applicant’s request for LC zoning, approve GO zoning with Conditional Use for bank with drive through, and staff recommended PO-170 amendment.



**Background:** This site was originally zoned SF-5 Single-family Residential (“SF-5”) and owned by a church. The site was rezoned to NO Neighborhood Office (“NO”) with Protective Overlay PO-170 in 2006 with the intent of developing the site for senior housing and offices. The existing PO limits residential development to SF-5 density and prohibits the following NO uses: multi-family residential, duplex, church or place of worship, day care limited and general, recycling collection station (private), utility (minor), automated teller machine, parking area (commercial), wireless communication facility, asphalt or concrete plant (limited) and agriculture. The PO requires a 125 foot building and parking setback from the south property line. The PO also requires an 8-10 foot tall masonry wall on the southern edge of parking located within 200 feet of the south property line, along with six 8-10 foot tall evergreen trees south of the wall, and tree screening along the southern 300 feet of Cranbrook. The original 2006 request was for GO General Office (“GO”) zoning, but was reduced to NO zoning with the protective overlay after significant communication with residential neighbors. The developer seeking the zone change in 2006 submitted a letter to surrounding home owners stating that proposed buildings would be residential in character with pitched roofs and masonry incorporated into building facades. The property has a 40-foot pipeline easement running from the southeast corner to the northwest corner of the site. The site has an “L”-shaped platted reserve with an existing detention pond along the south and west property lines. The subject property plat has access control with two openings on to 21<sup>st</sup> Street North, and no access controls to Cranbrook.

The applicant now requests a zone change from the existing NO to LC Limited Commercial (“LC”) on the north 250 feet of the property, and GO on the balance of the property, along with an amendment to PO-170. The applicant indicates to staff that he wishes to develop a bank with drive through at the northeast corner of the property, and develop the balance of the property with an office development. Banks are not a permitted use in the existing NO zoning. The applicant indicates that he does not want to be restricted by the NO zoning limitation of 8,000 square feet per business for office use, nor does he want to be restricted by the existing PO 125 foot setback requirement from the south property line. The applicant’s proposed PO amendment only adds the bank with drive through and ATM uses on the property, it reduces the southern building and parking setback to 50 feet, it eliminates the masonry wall requirement and replaces it with evergreen trees spaced 8 feet. It prohibits trash enclosures within 100 feet of the south property line, limits building height to 35 feet (same as NO standards), prohibits metal building facades, and requires that building facades be masonry, stone, stucco, glass, or a combination thereof. The PO proposes sign restrictions that prohibit LED, off-site (billboard), and portable signs; and requires that signs be monuments and a maximum of 22 feet in height. Signage would be prohibited along the south and east property lines, and would be limited to two 150 square-foot signs along 21<sup>st</sup> Street; the proposed signage in LC zoning exceeds what would be permitted in NO or GO zoning.

Property north of this site, across 21<sup>st</sup> Street North, is zoned SF-5 and developed with single-family residences; backyards of these residences face the subject property. South of the site is also zoned SF-5 and developed with residences with direct views of the site from backyards. East of the site, across Cranbrook, is predominantly zoned SF-5 and developed with single-family residences with side yards facing the subject site. Most houses south and east of the site have brick masonry incorporated into their designs. East of the site, across Cranbrook, the north 215 feet of the application area faces an NO zoned neighborhood office development, rezoned from SF-5 in 2001. This NO zoned office development to the east is separated from SF-5 houses by a water detention reserve, the development buildings are 100% brick masonry with hipped slate roofs, brick masonry walls exist adjacent to parking and drive aisle areas, and trash enclosures are brick masonry. Staff and surrounding neighbors feel that the NO zoned office development to the east is a good example of an office development compatible with the residential neighborhood. Property west of the site is zoned B Multi-family (“B”) and developed with apartment buildings; the apartment buildings have gabled roofs, brick columns, and brick chimneys, and are also visually compatible with the surrounding single-family development.

This mile portion of 21<sup>st</sup> Street North has LC zoned Commercial Community Unit Plans (CUPs) at the northeast and southeast corner with Webb, and also has LC zoned CUPs at the northwest and southwest

corners with Greenwich. The intervening mile section is primarily residential zoning and development, with the exception of office zoning on the subject NO zoned property, the discussed NO zoned property immediately to the east, and another NO zoned property further east.

**Analysis:** At the MAPC meeting held April 19, 2012, the MAPC voted (5-5-1) to deny the applicant's LC zoning and PO amendment request, and approve the staff recommended GO zoning with Conditional Use for a bank, and a staff recommended PO amendment. The motion failed with a tie vote, a subsequent motion to approve the applicant's request with the addition of a PO condition requiring site plan approval passed (6-4-1). One citizen spoke against the request at the MAPC hearing, preferring the staff recommended compromise. That citizen's letter of opposition is attached. District Advisory Board (DAB) II heard this request on May 7, 2012. The DAB had a failed vote (6-2) to approve the staff recommendation, a subsequent motion to approve the request per the MAPC recommendation passed (7-1). Protests amounting to over 35% were received, exceeding 20% and therefore requiring a six of seven vote for approval at City Council, see the attached protest map. The applicant provided several letters of support, those are attached.

**Financial Considerations:** There are no financial considerations in regards to the zoning request.

**Goal Impact:** The application will promote Economic Vitality.

**Legal Considerations:** The ordinance has been reviewed and approved as to form by the Law Department.

**Recommendation/Actions:**

- 1) Adopt the findings of the MAPC and approve the zone change and PO-170 amendment per the MAPC approval, authorize the Mayor to sign the ordinance and place the ordinance on the first reading (three-quarters majority required, 6 of 7 votes of the City Council, to override the 35% protest petition).
- 2) Deny the request (an override of the Planning Commission's recommendation requires a two-thirds majority vote of the City Council on the first hearing).
- 3) Return the case to MAPC for re-consideration (requires a simple majority vote of the City Council).

**Attachments:**

- Ordinance
- DAB Memo
- MAPC Minutes
- Protest Map
- Opposition Letter
- Letters of Support

AN ORDINANCE CHANGING THE ZONING CLASSIFICATIONS OR DISTRICTS OF CERTAIN LANDS LOCATED IN THE CITY OF WICHITA, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-C, AS ADOPTED BY SECTION 28.04.010, AS AMENDED.

BE IT ORDAINED BY THE GOVERNING BODY  
OF THE CITY OF WICHITA, KANSAS.

SECTION 1. That having received a recommendation from the Planning Commission, and proper notice having been given and hearing held as provided by law and under authority and subject to the provisions of The Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by Section 28.04.010, as amended, the zoning classification or districts of the lands legally described hereby are changed as follows:

Case No. ZON2012-00009

Zone change request from NO Neighborhood Office (“NO”) to LC Limited Commercial (“LC”) on the north 250 feet and GO General Office (“GO”) on the balance of the property on properties described as:

Lot 1, Block 1 AND Reserve N of Remington Place Addition, Wichita, Sedgwick County, Kansas; generally located south of East 21<sup>st</sup> Street North and west of Cranbrook.

**SUBJECT TO THE FOLLOWING AMENDED PROVISIONS OF PROTECTIVE OVERLAY DISTRICT #170:**

**Subject Property:**

**Limited Commercial – “North Parcel”**

The north 250 feet of Lot 1, Block 1, and Reserve N, Remington Place, an addition Wichita, Sedgwick County, Kansas.

**General Office – “South Parcel”**

Lot 1, Block 1, and Reserve N, Remington Place, an addition Wichita, Sedgwick County, Kansas, EXCEPT, the north 250 feet thereof.

**General Provisions:**

1.) Permitted Land Uses for “North Parcel”:

- a. All uses allowed within Neighborhood Office District (NO), EXCEPT multi-family, duplex, church or place of worship, Golf Course, Group home (General), Recycling Collection Station (private), Parking Area (Commercial), Wireless Communication Facility, Asphalt or Concrete Plant Limited, and Agriculture.
- b. The only Limited Commercial District (LC) uses are as follows: Bank or Financial Institution (including drive-up teller)
- c. Limited Commercial Zoning District property development standards shall apply for the “North Parcel,” unless otherwise stated below, inclusive of Special LC District regulations per the Wichita Sedgwick County Unified Zoning Code.

2.) Permitted Land Uses for “South Parcel”:

- a. All uses allowed within Neighborhood Office District (NO), EXCEPT multi-family, duplex, church or place of worship, Golf Course, Group home (General), Recycling Collection Station (private), Parking Area (Commercial), Wireless Communication Facility, Asphalt or Concrete Plant Limited, and Agriculture.
- b. General Office Zoning District property development standards shall apply for the “South Parcel,” unless otherwise stated below.
- c. Special General Office (GO) Zoning District regulations per the Wichita Sedgwick County Unified Zoning Code shall apply to the “South Parcel”. (Office Use size limitations shall be per GO not per NO District regulations).

3.) Setback Requirements:

- a. Buildings and parking shall be setback 50 feet from the south property line.
- b. All other building setback requirements shall be per the underlying Property Development Standards as stated per the Wichita-Sedgwick County Unified Zoning Code.

- 4.) Screening Requirements:
- Evergreen screening consisting of 8-10 foot tall trees planted at a rate of 8 foot on center shall be installed just north of the south property line creating a living wall. The owner of the subject property their successors, and/or assigns shall maintain the trees.
  - Tree screening between parking areas and Cranbrook Street shall be placed from southern boundary line to a point 300 feet north of said south boundary. Tree species shall be similar to those planted on the east side of Cranbrook Street, and shall be a minimum of 6-8 feet tall when installed.
  - Trash enclosures shall not be permitted within 100 feet of the south property line. Enclosures shall be screened with one or a combination of the following: masonry wall, wood fence or similar, or solid fence material.
  - Installation of the above screening requirements shall occur prior to the issuance of occupancy permits on the subject property.
- 5.) Architectural and Building Restrictions:
- No building heights shall exceed 35 feet as defined by city requirements.
  - No metal facades permitted.
  - Exterior façades shall consist of one or a combination of the following materials: Masonry, Stone, Stucco and or Glass.
- 6.) Signage Restrictions:
- Flashing, electronic displays (LED), off-site / billboards, and portable type signs shall not be permitted.
  - Signage along 21<sup>st</sup> Street shall be monument type signs.
  - No pole or monument type signs shall be permitted along Cranbrook Street.
  - Sign heights shall not exceed 22 feet.
  - No building signage shall be permitted along the south or east building facades for those buildings abutting the single family residences on the south and east.
  - No more than two monuments signs are allowed spaced no closer than 150 feet apart. The monument signs shall not exceed 150 square feet in area and the total monument sign area shall not exceed 300 square feet.
- 7.) Site Plan. This development shall conform to a staff-approved site plan, generally consistent with the site plan displayed at the MAPC public hearing on April 19, 2012.

SECTION 2. That upon the taking effect of this Ordinance, the above zoning changes shall be entered and shown on the "Official Zoning Map" previously adopted by reference, and said official zoning map is hereby reincorporated as a part of the Wichita-Sedgwick County Unified Zoning Code as amended.

SECTION 3. That this Ordinance shall take effect and be in force from and after its adoption and publication in the official City paper.

ADOPTED this 22nd day of May, 2012.

ATTEST:

\_\_\_\_\_  
Karen Sublett, City Clerk

\_\_\_\_\_  
Carl Brewer, Mayor

(SEAL)

Approved as to form:

\_\_\_\_\_  
Gary E. Rebenstorf, Director of Law



**EXCERPT MINUTES OF THE APRIL 19, 2012 WICHITA-SEDGWICK COUNTY  
METROPOLITAN AREA PLANNING COMMISSION HEARING**

**Case No.: ZON2012-09 (Deferred from 4-5-12)** - 21 Webb LLC, Michael and Debra Mildfelt (Owners) and MKEC c/o Brian Lindebak (Agent) request a City zone change from NO Neighborhood Office to GO General Office and LC Limited Commercial with an amendment to the Protective Overlay (PO #170) on property described as:

That part of Lot 1, Block 1, Remington Place, an Addition to Wichita, Sedgwick County, Kansas, described as beginning at the Northeast corner of said lot, thence West 125 feet, thence South 240 feet, thence East 55 feet, thence Southeasterly 78.11 feet to the East line, thence North along a curve 59 feet, thence North 6.25 feet, thence Northwest 81.05 feet, thence North 110 feet to the point of beginning.

AND

Lot 1, Block 1, Remington Place, an Addition to Wichita, Sedgwick County, Kansas, except that part described as beginning at the Northeast corner of said lot, thence West 125 feet, thence South 240 feet, thence East 55 feet, thence Southeasterly 78.11 feet to the East line, thence North along a curve 59 feet, thence North 6.25 feet, thence Northwest 81.05 feet, thence North 110 feet to the point of beginning.

AND

Reserve N, Remington Place, an Addition to Wichita, Sedgwick County, Kansas.

**BACKGROUND:** This vacant site was originally zoned SF-5 Single-family Residential ("SF-5") and owned by a church. The site was rezoned to NO Neighborhood Office ("NO") with Protective Overlay PO-170 in 2006 with the intent of developing the site for senior housing and offices. The existing PO limits residential development to SF-5 density and prohibits the following NO uses: multi-family residential, duplex, church or place of worship, day care limited and general, recycling collection station (private), utility (minor), automated teller machine, parking area (commercial), wireless communication facility, asphalt or concrete plant (limited), and agriculture. The PO requires a 125 foot building and parking setback from the south property line. The PO also requires an 8-10 foot tall masonry wall on the southern edge of parking located within 200 feet of the south property line, along with six 8-10 foot tall evergreen trees south of the wall, and tree screening along the southern 300 feet of Cranbrook. The original 2006 request was for GO General Office ("GO") zoning, but was reduced to NO zoning with the protective overlay after significant communication with residential neighbors. The developer seeking the zone change in 2006 submitted a letter to surrounding home owners stating that proposed buildings would be residential in character with pitched roofs and masonry incorporated into building facades. The property has a 40-foot pipeline easement running from the southeast corner to the northwest corner of the site. The site has an "L"-shaped platted reserve with an existing detention pond along the south and west property lines. The subject

property plat has access control with two openings on to 21<sup>st</sup> Street North, and no access controls to Cranbrook.

The applicant now requests a zone change from the existing NO to LC Limited Commercial ("LC") on the north 250 feet of the property, and GO on the balance of the property, along with an amendment to PO-170, see the attached zoning graphic and proposed Protective Overlay amendment from the applicant. The applicant indicates to staff that he wishes to develop a bank with drive through at the northeast corner of the property, and develop the balance of the property with an office development. Banks are not a permitted use in the existing NO zoning. The applicant indicates that he does not want to be restricted by the NO zoning limitation of 8,000 square feet per business for office use, nor does he want to be restricted by the existing PO 125 foot setback requirement from the south property line. The applicant's proposed PO amendment only adds the bank with drive through and ATM uses on the property, it reduces the southern building and parking setback to 50 feet, it eliminates the masonry wall requirement and replaces it with evergreen trees spaced 8 feet. It prohibits trash enclosures within 100 feet of the south property line, limits building height to 35 feet (same as NO standards), prohibits metal building facades, and requires that building facades be masonry, stone, stucco, glass, or a combination thereof. The PO proposes sign restrictions that prohibit LED, off-site (billboard), and portable signs; and requires that signs be monuments and a maximum of 22 feet in height. Signage would be prohibited along the south and east property lines, and would be limited to two 150 square-foot signs along 21<sup>st</sup> Street; the proposed signage in LC zoning exceeds what would be permitted in NO or GO zoning.

Property north of this site, across 21<sup>st</sup> Street North, is zoned SF-5 and developed with single-family residences; backyards of these residences face the subject property. South of the site is also zoned SF-5 and developed with residences with direct views of the site from backyards. East of the site, across Cranbrook, is predominantly zoned SF-5 and developed with single-family residences with side yards facing the subject site. Most houses south and east of the site have brick masonry incorporated into their designs. East of the site, across Cranbrook, the north 215 feet of the application area faces an NO zoned neighborhood office development, rezoned from SF-5 in 2001. This NO zoned office development to the east is separated from SF-5 houses by a water detention reserve, the development buildings are 100% brick masonry with hipped slate roofs, brick masonry walls exist adjacent to parking and drive aisle areas, and trash enclosures are brick masonry. Staff and surrounding neighbors feel that the NO zoned office development to the east is a good example of an office development compatible with the residential neighborhood. Property west of the site is zoned B Multi-family ("B") and developed with apartment buildings; the apartment buildings have gabled roofs, brick columns, and brick chimneys, and are also visually compatible with the surrounding single-family development.

This mile portion of 21<sup>st</sup> Street North has LC zoned Commercial Community Unit Plans (CUPs) at the northeast and southeast corner with Webb, and also has LC zoned CUPs at the northwest and southwest corners with Greenwich. The intervening mile section is primarily residential zoning and development, with the exception of office zoning on the subject NO zoned property, the discussed NO zoned property immediately to the east, and another NO zoned property further east.

**CASE HISTORY:** The property was rezoned from SF-5 to GO with PO-170 in 2006, and platted as Lot 1, Block 1 and Reserve N of the Remington Place Addition in 2001.

**ADJACENT ZONING AND LAND USE:**

NORTH	SF-5	Single-family residences
SOUTH	SF-5	Single-family residences
EAST	SF-5, NO	Single-family residences, neighborhood offices
WEST	B	Multi-family residences

**PUBLIC SERVICES:** The subject property has frontage along East 21<sup>st</sup> Street North, a 110-foot wide, five-lane arterial street with a central turn lane. This portion of Webb has daily traffic counts of 11,523 vehicles. The 2030 Transportation Plan recommends that this portion of Webb remain a five-lane arterial. The City Traffic Engineer states that a traffic signal light will not be considered at the 21<sup>st</sup>/Cranbrook intersection until daily traffic on Cranbrook exceeds 4,000 cars per day; the Traffic Engineer does not see this happening in the near future. Cranbrook is a two-lane local street with a 64-foot width tapering to 90 feet at the 21<sup>st</sup> Street intersection. All utilities are available at the site.

**CONFORMANCE TO PLANS/POLICIES:** The 2030 Wichita Functional Land Use Guide of the Comprehensive Plan identifies the site as appropriate for "Major Institutional," reflecting the property's previous church ownership, and the platted reserve is designated as "Park and Open Space." The zone change request is not consistent with this Land Use Guide designation. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials; commercial development should have site design features that limit noise, lighting and other activity from adversely impacting surrounding residential areas; commercial uses should be concentrated in clusters as opposed to strip development along arterials; and commercially generated traffic should not feed directly onto local residential streets. This LC request is not compatible with the Plan recommendation against "mid-mile" strip commercial locations, and it is not compatible with the Plan prohibition of putting commercial traffic on residential streets. The Office Locational Guidelines of the Plan recommend that office sites be located adjacent to arterial streets; the guidelines also indicate that low-density office uses can serve as a transitional land use between residential uses and higher intensity uses. The request for GO zoning is in general conformance with the Office Locational Guidelines.

The minimum standards of the Zoning Code, without a PO, would require screening between development on this site and residential development; screening can be achieved with walls, fences, or landscaping meeting the code definition of screening. The minimum standards of the Zoning Code will also require a compatibility setback on this site of 25-feet, requires that mechanical equipment and trash receptacles are screened from ground view, and limits light poles to 15 feet in height when within 200 feet of residential zoning. Minimum code requirements would also require a landscape plan for development on this site.

**RECOMMENDATION:** Planning staff has had extensive communication with the applicant and opposed neighbors on this case. Neighbors have filed a total of 33 protests amounting to 37 percent of the protest area, see attached. Several neighbors are opposed to LC zoning in general, they are opposed to the south setback reduction, and opposed to elimination of the masonry wall requirement. Neighbors fear that LC zoning with uses limited by a PO could change over time through PO amendments and adjustments, resulting in retail commercial development on the property. Staff would note that other POs in the City have been adjusted and amended over time

loosening original restrictions. The applicant provided six letters of support from surrounding property owners for his request.

After application was made, Planning Staff further researched this request and determined that a bank with drive through can be permitted in GO zoning with a Conditional Use. Staff points out that this solution still permits a bank with drive through, GO zoning allows offices larger than 8,000 square feet, and GO zoning would alleviate the fears of several neighbors by eliminating the LC zoning. Staff also points out that GO zoning on the entire site would keep sign restrictions unchanged, and GO zoning would be compatible with Comprehensive Plan locational criteria. With increased intensity in zoning (NO to GO), and uses (a bank with drive through), staff recommends that the PO amendment use several design standards to ensure compatibility with the surrounding neighborhood, consistent with standards established by the existing NO office development east of the application area. These proposed design standards are consistent with commitments the previous developer made with surrounding neighbors.

The existing pipeline easement and detention reserve on the site severely limit use of the south and west portions of the site; currently, only a very small portion of the site's southeast corner could be developed south of the existing 125 foot setback. And, neighbors along the south property line, currently protected by the 125 foot setback, are adamantly opposed to reducing the setback as it was established by the City Council in 2006. The applicant requested that the south setback be reduced to 50 feet, which staff would point out is twice the distance of the Zoning Code required 25 foot compatibility setback. However, until such time that the pipeline easement and detention reserve can be feasibly altered, staff does not see value in recommending a setback reduction. This would not preclude the applicant from coming back to the MAPC in the future for a southern setback reduction if pipeline easement and detention reserve changes become feasible.

Therefore, based upon the information available prior to the public hearings, planning staff recommends that the request for LC zoning and PO-170 amendment as requested by the applicant be **DENIED**, but that the request for GO zoning with a staff recommended PO amendment on the property, along with a Conditional Use for a bank with drive through on the north 250 feet of the property, be **APPROVED**, with the following staff recommended Conditional Use conditions and Protective Overlay amendment:

**Conditional Use for Bank with Drive Through in GO zoning on the north 250 feet of the property:**

1. The bank site shall be developed in conformance with a site plan approved by planning staff prior to issuing building permits.
2. The bank site shall be limited to one access point on 21<sup>st</sup> Street North, and one exit only access point on Cranbrook, approximately 190 feet south of the north property line and aligned with the drive aisle on the east side of Cranbrook.
3. The bank site shall maintain cross-lot access with the remainder of the contiguous GO zoned property.
4. All property development, signage, architectural design, screening, landscaping, trash enclosures and light pole heights on the site shall conform to GO zoning requirements and PO-170 requirements, consistent with the remainder of the contiguous GO zoned property.

5. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VIII of the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

**Amended Protective Overlay 170 applying to the entire GO zoned property:**

1. A bank with drive through is permitted on the north 250 feet of the site, as approved by Conditional Use.
2. Other permitted uses include office uses as permitted in GO, and all NO uses except: multi-family, duplex, church or place of worship, Golf Course, Group home (General), Recycling Collection Station (private), Parking Area (Commercial), Wireless Communication Facility, Asphalt or Concrete Plant Limited, and Agriculture.
3. Residential uses shall be restricted to the maximum density allowed by SF-5 zoning.
4. Buildings, parking and trash receptacles shall be setback 125 feet from the south property line, unless said setback is reduced with a PO amendment approved by the MAPC. All other building setback requirements shall be per the underlying Property Development Standards as stated per the Wichita-Sedgwick County Unified Zoning Code.
5. A masonry wall 8-10 feet in height shall be placed along the southern most edge of parking and drive aisles located within 200 feet of the south property boundary, unless such parking and drive aisles are screened by a building. In addition to code required landscaping, a landscape buffer shall be placed south of the wall with a minimum of 6 conifer trees 8-10 feet in height.
6. Tree screening between parking areas and Cranbrook shall be placed from the southern boundary line to a point 300 feet north of the south boundary. Trees shall be similar to those on the east side of Cranbrook, and shall be 6-8 feet tall.
7. Signs shall be monument signs and otherwise conform to the sign code standards for GO zoning. No building or monument signs shall be permitted along south or east building facades.
8. Design standards shall require a 35-foot building height limit, no metal facades, buildings with a minimum of 50% brick masonry on all facades, gabled or hipped roofs, and trash enclosure screening walls consistent with the building brick masonry requirement.
9. Access controls on the site shall meet the City of Wichita Access Management Guidelines, and shall be limited to two access points on 21<sup>st</sup> Street North, and two access points on Cranbrook. The southernmost access point on Cranbrook shall be a minimum of 125 feet north of the south property line.
10. This Protective Overlay shall not be administratively adjusted in any way. All proposed changes to this Protective Overlay shall require a Protective Overlay amendment request to the MAPC.

Staff notes that the recommended PO amendment differs from the applicant's request in the following ways: the applicant requests to reduce the south setback from 125 to 50 feet, the applicant requests to remove the masonry wall parking lot screening requirement and replace it with evergreen trees spaced eight feet, the applicant requested design guidelines do not include pitched roofs or a masonry percentage requirement, the applicant's signage restrictions would allow 150 square-foot monument signs where staff's recommendation would limit monument signs to the GO standard of 96 square feet, the applicant's request for LC zoning would allow buildings signs at 20% of building elevations where staff's recommendation for GO zoning and sign restrictions would limit building signs to 32 square feet.

Planning staff confirmed with legal that GO zoning with a Conditional Use for a bank with drive through can be approved by MAPC at this hearing, as this proposal is less intensive than the advertised and notified LC zoning request.

This recommendation is based on the following findings:

1. **The zoning, uses and character of the neighborhood:** Property north of this site, across 21<sup>st</sup> Street North, is zoned SF-5 and developed with single-family residences; backyards of these residences face the subject property. South of the site is also zoned SF-5, and developed with residences with direct views of the site from backyards. East of the site, across Cranbrook is predominantly zoned SF-5 and developed with single-family residences with side yards facing the subject site. Most houses south and east of the site have brick masonry incorporated into their designs. East of the site, across Cranbrook, the north 215 feet of the site faces an NO zoned neighborhood office development. This NO zoned office development to the east is separated from SF-5 houses by a water detention reserve, the development buildings are 100% brick masonry with hipped slate roofs, brick masonry walls exist adjacent to parking and drive aisle areas, and trash enclosures are brick masonry. Property west of the site is zoned B Multi-family and developed with apartment buildings; the apartment buildings have gabled roofs, brick columns, and brick chimneys.
2. **The suitability of the subject property for the uses to which it has been restricted:** The site could be developed with office and residential uses permitted in the NO zoning district; a previously mentioned NO zoned office development exists due east of this site. However, the site has remained vacant since rezoned to NO in 2006, and the applicant states that he cannot effectively develop the property under the current limitations.
3. **Extent to which removal of the restrictions will detrimentally affect nearby property:** Approval of the requested LC and GO zoning would subject the surrounding neighborhood to the more intense use of a bank with drive through, other potential LC uses should the PO be amended to allow them, increased signage, and the increased density of offices allowed in GO. Approval of the requested PO amendment would reduce the setback of buildings and parking from the southern neighbors, and would eliminate the masonry wall requirement adjacent to parking, potentially subjecting neighbors to increased light from vehicle headlights. Protesting neighbors are opposed to: a proposed increase in zoning intensity, the decreased setback, and the elimination of the masonry wall requirement.

The staff recommended GO zoning with Conditional Use for a bank with drive through, along with the staff recommended PO amendment, should mitigate the increased office density and bank with drive through use with: design standards, maintaining the established setback and masonry wall requirement adjacent to parking, and by maintaining signage standards as they currently exist.
4. **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The 2030 Wichita Functional Land Use Guide of the Comprehensive Plan identifies the site as appropriate for "Major Institutional," reflecting the property's previous church ownership, and the platted reserve is designated as "Park and Open

Space.” The zone change request is not consistent with this Land Use Guide designation. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials; commercial development should have site design features that limit noise, lighting and other activity from adversely impacting surrounding residential areas; commercial uses should be concentrated in clusters as opposed to strip development along arterials; and commercially generated traffic should not feed directly onto local residential streets. This LC request is not compatible with the Plan recommendation against “mid-mile” strip commercial locations, and it is not compatible with the Plan prohibition of putting commercial traffic on residential streets. The Office Locational Guidelines of the Plan recommend that office sites be located adjacent to arterial streets; the guidelines also indicate that low-density office uses can serve as a transitional land use between residential uses and higher intensity uses. The request for GO zoning is in general conformance with the Office Locational Guidelines.

5. **Impact of the proposed development on community facilities:** LC uses, and increased office density allowed by GO zoning, would increase traffic to this site beyond what the current NO zoning would generate. Also, the proposed PO amendment to reduce the building and parking setback would increase the impervious surface permitted on the site, increasing storm water runoff from the site. The staff recommended GO zoning, Conditional Use for bank with drive through, and PO amendment which maintains the existing 125 foot setback should have no measurable impact on community facilities beyond the potential impact of development under the existing zoning and restrictions.

**JESS MCNEELY**, Planning Staff presented the Staff Report.

**ALDRICH** asked if there were any mid-mile commercial strips located in the general vicinity of the property now.

**MCNEELY** said yes; however, he noted that most Limited Commercial zoning is contiguous to corners. He briefly reviewed the zoning map and referenced mid-mile Limited Commercial (LC) zoning along East 21<sup>st</sup> Street contiguous with Commercial Unit Plans (CUP's) at the corner with Webb Road surrounded by multi-family to the west and current Neighborhood Office zoning to the east; residential to the south and a Planned Unit Development (PUD) to the north. He said further east on the map, which is not shown, all commercial zoning is contiguous with the CUP's at the intersections.

**ALDRICH** asked if there were any mid-mile commercial strips located within the City.

**MCNEELY** replied yes.

**ALDRICH** commented that if the pipeline was moved prior to construction that would change the complexity of property developed.

**MCNEELY** replied yes and said they understand that the applicant was currently looking into that but as of now the pipeline easement has not been moved. He said if that happens and the easement is reconfigured the applicant can request an amendment to the Protective Overlay (PO).



**ALDRICH** mentioned that the 8-foot on center trees will provide extremely dense screening.

**MCNEELY** acknowledged that it was dense; however, he added that it will still not block headlights pointed south and that was why the staff recommended the 8-10-foot masonry wall. He also mentioned the parking prohibition within 200 feet of the south property line unless they are screened by a building.

**GARY OBORNY, AGENT FOR 21 WEBB, LLC (PROPERTY PURCHASER AND DEVELOPER), 13824 PINNACLE, WICHITA, KS** referred to an aerial of the property and gave a brief history stating that the site had once been owned by a church that decided not to develop the property. He said the property was purchased by another developer; however, due to issues and opposition they could not make property development economically feasible so they settled on what they thought they could do with zoning and sold the property. He said the third buyer was also a commercial developer that after the reviewing location of the present pipeline, setbacks and square footage of the property decided he could not develop it and sold it at a financial loss. He said they entered into a purchase contract July 2011 and in August met with Planning Department Staff to discuss application changes that they are requesting now. He said when they left that particular meeting they had a comfort level that what they were asking for was reasonable and within the guidelines of the Comprehensive Plan, which is merely a guide. He said throughout the City and particularly along 21<sup>st</sup> Street there is much Limited Commercial zoning that exceeds the mid-mile policy.

**OBORNY** said they purchased the property in October and contacted the Planning Department the next February to make application and start contacting area neighbors. He said they believe in communication and up front disclosure because they build quality projects and try to be a good neighbor. He said they sent letters inviting neighbors to a Saturday morning breakfast meeting at their office so they could explain item by item the zoning changes they were asking for. He said 3 homeowners showed up. He said since they didn't get very good responses they contacted the neighbors' main advocate Jim Walker and scheduled another meeting 3 weeks later where 5 homeowners showed up. He said they walked the property with the 3 homeowners who came to the initial meeting and talked about ways to mitigate any kind of exposure of the neighbors to the development. He said since then they have continued to canvas the neighborhood door-to-door; have made multiple phone calls and continue to communicate the plan to the neighbors.

**OBORNY** briefly reviewed a slide of the zone change request including 2 possible locations for a bank on the property. He mentioned that they prefer the northeast corner location because of frontage along 21<sup>st</sup> Street for exposure of branding and signage. He said the other location was at the northwest corner. He said the bank location is the LC they are requesting. He said they would like additional signage in the form of a 54 square-foot stone and metal high quality monument sign. He said because they are developing a 60,000 square foot complex, they need that amount of sign footage to accommodate all the tenants. He said there will be no LED signs, offsite billboards and no moving parts. He said there would be halo-light florescent lighting. He commented that timing is everything in real estate. He said they are not asking for any other changes and added that with this proposed protective overlay they cannot make any changes on the property without going through the entire zoning process again.



**OBORNY** referred to slide 3 which was LC zoning identified in red as shown in the Comprehensive Plan. He referred to the Oaks property and noted that although it was being used as NO (Neighborhood Office) zoning he believed it was actually zoned LC. He said there were numerous locations throughout the City that don't fit the Comprehensive Plan which is a guide, not something that is set in stone. He said there were many properties located mid-mile throughout the City.

**OBORNY** mentioned correspondence they received regarding trash and said in response to that they have updated the plan to include 100 foot setbacks for the dumpsters. He said it was never their intention to have any of the trash locations on the exterior of the property. He also noted that the dumpsters will be surrounded by brick with metal doors.

**MOTION:** To give the applicant 2 additional minutes

**ALDRICH** moved, **WARREN** seconded the motion, and it carried (10-0).

**OBORNY** said they will put solid evergreens all along the south side of the development as well as a buffer of evergreens for the parking lot. He said there will be 2 sets of 8-10-foot evergreens on the property. He said the facade will be a contemporary design which they feel will make them unique in the business environment. He said they have had great response and that the first 2 buildings in the development are 70 % leased. He said tenants will consist of medical, financial planners and other businesses that work Monday through Friday and will be leaving the area by 5:00 p.m. each evening, which they feel is better than having a church that has their meetings Sunday, weekends and evenings. He referred to the proposed landscaping for the project and referenced an example of another project they completed.

**OBORNY** concluded his presentation by stating that some of the numbers in the Staff Report were incorrect and said they have received support letters for the project. He said they now have support of 54.8% of owners within 200 foot and 11% neutral. He also noted that some of the homes within the 200-foot range are rentals. He said the protests were 33.4% within the 200-foot range. He said two people have even withdrawn their protest petitions. He said this is a \$15 million dollar project and it is not in their best interest to be cheap about what they are doing.

**ALDRICH** asked the applicant to address relocation of the pipeline?

**OBORNY** said they are awaiting documents from the attorneys and final corporate approval. He said they have agreed with the pipeline service to move the pipeline.

**ALDRICH** asked if that would occur prior to development.

**OBORNY** said moving the pipeline is about a 2 week process.

**JIM WALKER, 2026 RED OAKS** mentioned that he was at the Planning Commission in 2006 regarding this property and the application of a church presented by the developer. He said compared to what is happening today that developer did not get the cart before the horse. The developer wanted to understand what he was buying and how it was zoned before he closed on the property. He said at that hearing Commissioners mentioned the heft of protest petitions and recommended that the developer meet with the neighbors and work out a consensus and that is

what they did. He said one of the quid pro quos of those meetings was that surrounding neighbors withdrew sufficient petitions to avoid the requirement of a super majority for approval of the proposed development by the City Council. He said that plan, which was subsequently approved by the Planning Commission and City Council, included NO zoning, no GO zoning, setbacks, screening and restrictions on additional uses. He said drive-thrus and ATM's were not included. He asked the Commission to compare this plan to the Remington Office Park right next door which includes gabled roofs, slate and masonry. He said Remington is a good Neighborhood Office development that is a good transitional area from an arterial street to a neighborhood of mostly all single family except NO and multi-family to the west. He said every rooftop within sight is a gabled roof and he thinks that is an appropriate limitation as recommended by Planning Staff. He said he thinks Planning Staff has done a remarkable job as "gate keepers" to analyze everyone's position. He said he can live with staff's recommendations even though he does not want a drive thru or ATM but he feels they are the professionals and he feels they did their best to measure everyone's input. He said the idea of how much money and profit the developer needs to make is bogus. He said it is all a function of what did the developer pay for the dirt. He said if the developer can get the pipeline moved great, but that is not under the purview of this Commission or him as a citizen. He said if the pipeline is moved into an L shape along the west and south of the property, it will negatively impact abutting properties. He said this development cries out to be a look alike to the Remington Office Park immediately to the east.

**MOTION:** To give the speaker 2 additional minutes.

**FARNEY** moved, **ALDRICH** seconded the motion, and it carried (11-0).

**WALKER** said if the pipeline is relocated then he believes it is a new ballgame. He said that part of the applicant's application that asks for the setback is grossly premature. He said he would like the Commission to consider what an appropriate buffer is after the pipeline gets moved.

**JOHNSON** asked if the pipeline is not moved does it make any difference what the zoning is on the pipeline easement.

**WALKER** said he believes it makes a difference on the size of buildings that can be put on the property.

**JOHNSON** asked how much of Mr. Walker's property actually abuts the applicant's property.

**WALKER** said approximately 50 feet.

**OBORNY** commented that what was feasible 6 years ago may not be feasible because the economy has changed. He stated that there was a 15-foot landscape buffer between the pipeline and the south property line. He noted for the record that the largest lineal property owner close to the application area supports the project. He said there is a heavily landscaped reserve adjacent to Mr. Walker's property and noted that the distance from Mr. Walker's deck to a building on the development is over 150 feet.

**DENNIS** asked the applicant to detail all the items they did not agree with in the Staff Report.

**OBORNY** said they disagree with everything listed in the Staff Report because they believe they are bureaucratic in nature. He gave as an example of what is or is not acceptable for materials. He said the predominate materials on the homes and apartment along 21<sup>st</sup> Street is siding with accents. He said there is brick work on the front of the homes. He said the backside of their property is going to be stucco which they believe is complementary as far as the quality level. He said as far as taste everything is the same you end up with a monolithic and vanilla world. He concluded by asking the Planning Commission to approve the zoning they requested.

**DIRECTOR SCHLEGEL** referred Commissioners to pages 5 and 6 of the Staff Report which outlined the differences between staff's recommendation and the applicant's request.

**MILLER STEVENS** commented since there seems to be significant diversion from what was recommended and what the applicant wants, would it be better to defer the item for further discussion between the City and the applicant.

**MCNEELY** replied that it was up to the applicant. He said staff has met with the applicant, agent and neighborhood extensively.

There was brief discussion concerning location of the bank and signage.

**MOTION:** That the request for rezoning with the protective overlay submitted by the applicant be approved.

**ALDRICH** moved, **JOHNSON** seconded the motion.

There was brief discussion concerning buffering to the south, setbacks and landscaping.

**MCNEELY** said the existing PO has a 125-foot setback from the south property line and a landscape buffering requirement along the east property line along Cranbrook. He said the applicant is requesting that the setback be reduced to 50 feet.

**SUBSTITUTE MOTION:** To approve subject to staff recommendation.

**FOSTER** moved, **WARREN** seconded the motion, and it failed (6-5-1).

**ALDRICH, DENNIS, FARNEY, JOHNSON, KLAUSMEYER, and MCKAY**  
– No. **SHEETS** – Abstained.

**MILLER STEVENS** requested clarification of the motion.

**MCNEELY** clarified staff's recommendations.

The **ORIGINAL** motion passed (6-4-1). **FOSTER, MITCHELL, MILLER STEVENS and WARREN** – No. **SHEETS** – Abstained.

Case **ZON2012-00009**

Total Area **974,974 sq. ft.**

Application Area **367,255 sq. ft.**

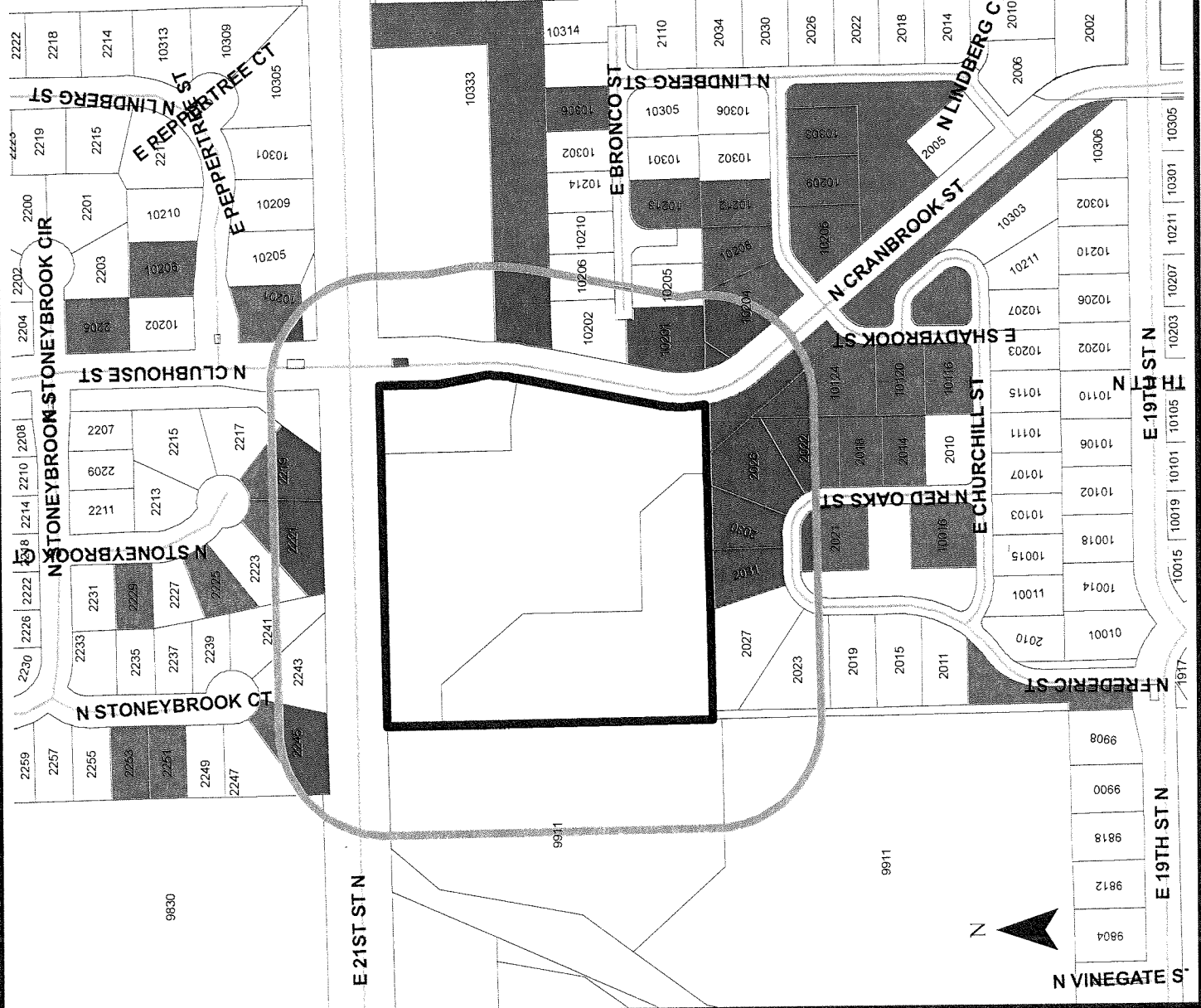
Street R/W **179,779 sq. ft.**

Net Area **427,940 sq. ft.**

20% of Net Area **85,588 sq. ft.**

Net Protest Area **152,186 sq. ft.**

Total % Protesting **35.56%**





# TRIPLETT, WOOLF & GARRETSON, LLC

LAW FIRM

Thomas C. Triplett  
John P. Woolf  
Thomas P. Garretson  
James A. Walker  
Timothy E. McKee  
Theron E. Fry \*  
Eric B. Metz  
Ron H. Hamden  
Tad Patton  
Rachael K. Pirner  
Jeffrey D. Leonard

\* Admitted in Kansas & Texas

2959 North Rock Road, Suite 300  
Wichita, KS 67226

Email: jawalker@twgfirm.com

TELEPHONE  
(316) 630-8100

FAX  
(316) 630-8101

Jeffery C. Dahlgren  
J.T. Klaus  
Jerald W. Rogers  
Ross E. Helwig  
Amy Fellows Cline  
Tyler E. Heffron  
Paula D. Langworthy  
Andrew N. Kovar  
Shane A. Rossen  
Samuel D. Ritchie \*\*  
Mary F. Carson, *Of Counsel*  
\*\* Admitted in Kansas & Missouri

April 12, 2012

Wichita/Sedgwick County  
Metropolitan Area Planning Commission  
Wichita City Hall, 10<sup>th</sup> Floor  
455 N. Main St.  
Wichita KS 67202-1688

**Attention:** Jess McNeely, AICP – *via email*  
Wichita Area Department Planning Professional

*RE: Case No.: ZON2012-00009*  
*Request: Zone change from "NO" Neighborhood Office to "GO"*  
*General Office and "LC" Light Commercial with Reduction of*  
*Protective Overlay SetBack Requirements and Removing*  
*Excluded Uses*  
*Applicant: 21 Webb, L.L.C. (Occidental Management)*  
*Agent: MKEC Engineering Consultants, Inc.*  
*Location: South of East 21<sup>st</sup> Street North and West of Cranbrook*

Dear Commissioners and Staff:

My wife Mary Lynn and I are homeowners in Remington Place at 2026 Red Oaks. We are writing with regard to the application for a zoning change in our neighborhood. We received a Notice of Public Hearing distributed to the neighbors in this area by the Wichita Area Planning Department ("MAPD"). We regard the Metropolitan Area Planning Commission Public Hearing, scheduled for April 19, 2012, at 1:30 p.m., as an important meeting and possibly the last meaningful opportunity to have our views expressed. We have filed a Protest Petition. I have enclosed a diagram depicting the location of the nearby property whose owners also protest this requested change. There likely will be more protests filed by the time of the hearing.

The subject property is an approximately 8 acre tract at the southwest corner of 21<sup>st</sup> and Cranbrook. This same tract was previously rezoned 6 years ago from single family to neighborhood office in zoning case number ZON2005-57. In that case, Tim Buchanan's company, Legend Development, bought the property from a church congregation. There were

numerous protest petitions submitted and eventually through negotiations and developer concessions many Petitions were withdrawn in exchange for setbacks, screening, use, and other limitations.

My wife and I are opposed to the pending request for zoning change for reasons that include the fact that changing to general office and/or limited commercial from neighborhood office is inconsistent with the general character of the neighborhood. A general office zoning change allows for a more dense usage which generally translates to larger buildings, parking lots, light poles, traffic and trash. The owner wants to attract at least one banking or credit union tenant with the ability for drive-throughs and ATM machines. This means evening, weekend and late night traffic, noise, headlights, etc.

The applicant, Occidental Management, is a reputable firm and I'm sure that it has consideration for the adjoining owners, but the zoning change is obviously sought for economic reasons of its own. As far as I can tell, there is no shortage of general office space in the northeast sector, including much available space currently zoned for any development consistent with whatever Occidental may have in mind.

I plan to attend the public hearing on April 19, 2012.

The property immediately east and across Cranbrook from the subject property (Remington Office) is controlled by Clifford Nies and was rezoned several years ago to accommodate office development. There are, however, important distinctions between that change and the one under consideration here. They include:

- Remington Office was rezoned from single family to NO, not GO and LC.
- The seller, Peake Development, controlled the residential property to the south and thus incurred the brunt of the commercial development and economic impact on his own property. It was not imposed on third parties.
- Remington Office has a depth of only 300'; not the approximately 750' sought by the applicant here.
- Substantial masonry, roofline, signage, landscape, and screening restrictions are in place at Remington Office as a condition of the less restrictive use.

As to the subject property, a 40' pipeline easement runs diagonally through the property. The implication is that the pipeline precludes this property for development as zoned. The applicant has represented that it is negotiating with the pipeline company to relocate the pipeline. I understand that pipeline relocation is outside the purview of this commission. This commission can, however, note the potential for pipeline relocation as a part of its consideration of all relevant facts and circumstances. Those circumstances include:

- The pipeline is longstanding and was in place when Occidental acquired the property.
- The pipeline runs southeast from the property in the same direction across the entire Remington addition and did not preclude residential development over that entire area.

- There has been at least one commercial developer who owned the property as currently zoned who felt the tract could be commercially developed as "NO".

Thus, there is strong indication that the property is a desirable location for development. The only uncertainty is the extent of profit to the developer. Such notions should not be part of the legitimate considerations.

The developer wants to reduce the 125' setback from the South boundary to 50' contending that there will be adequate buffering. That subjective conclusion that a reduction to at 50' setback is reasonable is one with which we strongly disagree. The 125' is consistent with the depth of the adjoining reserve and was negotiated in good faith with the prior developer and adopted and endorsed by this Commission. This property was single family when most of the adjoining neighbors acquired their property. There are at least three relevant factors for consideration in evaluating the requested southern setback reduction:

1. In 2006, this 125' setback was the subject of negotiations between the applicant's predecessor in interest and the affected neighbors. As a result the protest petitions were withdrawn, protestors personally appeared before the MAPC and acknowledged the withdrawal of protests in consideration of the developer's compromise. Importantly, this Commission and the City Council unanimously approved the compromised zoning change.
2. The 125' setback is consistent with the buffer on the west 3/4<sup>th</sup>s of the south property line created by the retention pond (Reserve N). The 125' setback along the entire south line also results in the preservation of several mature trees that are part of the hedgerow and provide a scenic screen along Cranbrook.
3. Due to the pending efforts by the developer to arrive at an agreement to relocate the pipeline, it is obvious that the application is premature. The developer/applicant has acknowledged that if he obtains permission to relocate the pipeline, the retention pond will also need to be moved. Thus, the exact relocated boundaries of the retention pond have yet to be determined. It is possible that it may be mutually beneficial to the developer and the owners adjoining to the south to extend the pond along the entire southern boundary. Thus the square footage at the north end of the existing pond could be converted to buildable square footage. The pond's current configuration, location and boundaries are simply the necessary result to accommodate the present location of the pipeline easement. Until such time as the commission can verify that the applicant has taken all reasonable steps to appropriately accommodate the needs of adjoining neighbors, the application is premature. This is especially true as it relates to the south property line setback. At this time the applicant cannot provide such verification.

Any considerations of zoning change are premature until it is determined whether the pipeline will be relocated in the foreseeable future; and, if so, where.

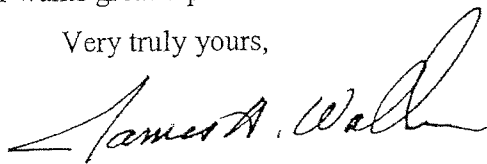
The extent of detrimental impact on nearby property due to restriction removal has been minimized by the developer. I think pole lighting, pavement, trash dumpsters, drainage, traffic, density, larger commercial buildings, contrasting usage and reduction of setbacks are all substantial detrimental impacts to a residential community.

In short, the economic incentives and desire of the current owner/developer to shift some value from adjacent properties to his property are insufficient justifications to support restriction removal to the extent being requested. The subject property was acquired with the existing zoning, protective overlay, pipeline and drainage in place. If those circumstances impact the relative value of that property, those were conditions and limitations known to and assumed by that owner at the time of acquisition. By contrast, the nearby residential neighbors acquired their respective single family properties with the knowledge that subject property was zoned SF-5 and there was no pending application to change that level of restriction. Those owners have already agreed to one relaxation of restrictions. The nearby residential neighbors made concessions to withdraw their respective protests six years ago in compromise and consideration of the protections now in place. Not one material thing has changed except a new developer wants another free bite at the apple.

The applicant has communicated with several homeowners as to its intent to limit development. What is not stated is that the application for zoning change does not contain limitations that would make mandatory all the limitations mentioned. The applicant implies that the site is too small for merely NO development due to costs for infrastructure. The hang-up, of course, is price. Simply put, the property is more valuable to the developer as "GO" and "LC" than residential "NO".

As adjoining residents we and most of our neighbors regard it patently unfair that the current owner can acquire the property and immediately attempt to repudiate the prior bargains and limitations put in place after detailed and meaningful negotiations with the then owner. As owners we would much prefer to go back to the single family zoning that was in place in 2005. We, obviously, will not be given that choice. It is hard to understand, then, the justification for permitting the new owner to enhance its property at the expense of the adjoining owners and neighbors, merely because the developer wants greater profits.

Very truly yours,



James A. Walker

JAW:mjv

Enclosure      Diagram Identifying location of Protestor's Property



c: Don Sherman (w/enclosure)  
Bob Aldrich (w/enclosure)  
Morrie L. Sheets (w/enclosure)  
David Dennis (w/enclosure)  
David Foster (w/enclosure)  
Debra Miller Stevens (w/enclosure)  
George Sherman (w/enclosure)  
John L. Schlegel (w/enclosure)  
Dale Miller (w/enclosure)  
Ron Marnell (w/enclosure)  
Shawn Farney (w/enclosure)  
Don Klausmeyer (w/enclosure)  
M.S. Mitchell (w/enclosure)  
John W. McKay, Jr. (w/enclosure)  
Bill Johnson (w/enclosure)  
Chuck Warren (w/enclosure)

10  
April 8, 2012 *jed*

To: Mr. Gary Oborny

21Webb LLC

8111 E. 32<sup>nd</sup> St. N., Suite 101

Wichita, KS 67226

From: James + Judy Donnell  
Address: 2023 N. Frederic  
Wichita, KS 67206

RE: Zoning and Protective Overlay Change Requests at 21<sup>st</sup> and Cranbrook

Dear Gary,

I am aware 21Webb LLC recently purchased the land at the southeast corner of Cranbrook and 21<sup>st</sup> Street and as you work through the development process, you discussed the zoning and protective overlay changes you are requesting to move the project forward with me. I have also received and reviewed the notice from the City. I am in agreement with your zoning and protective overlay change requests.

Best regards,

*James M. Donnell*  
Homeowner

*Judy L. Donnell*

April 5, 2012

To: Mr. Gary Oborny

21Webb LLC

8111 E. 32<sup>nd</sup> St. N., Suite 101

Wichita, KS 67226

From: Clifford Nies

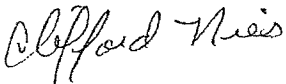
**10333 E. 21st, Wichita, KS 67206**

RE: Zoning and Protective Overlay Change Requests at 21<sup>st</sup> and Cranbrook

Dear Mr. Oborny,

I have received and reviewed the notice from the City of Wichita regarding your proposed changes to the current zoning and protective overlay on the property at the southeast corner of Cranbrook and 21<sup>st</sup> Street. I am aware that 21Webb LLC recently purchased the land and you discussed the zoning and protective overlay changes you are requesting with me. I am not opposed your zoning and protective overlay change requests.

Best regards,

A handwritten signature in cursive script that reads "Clifford Nies".

Clifford Nies

April 2, 2012

To: Mr. Gary Oborny  
21Webb LLC  
8111 E. 32<sup>nd</sup> St. N., Suite 101  
Wichita, KS 67226

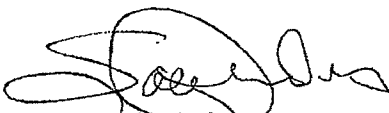
From: Sally Andrews  
2027 N. Frederic St.  
Wichita, KS 67206

RE: Zoning and Protective Overlay Change Requests at 21<sup>st</sup> and Cranbrook

Dear Gary,

I am aware 21Webb LLC recently purchased the land at the southeast corner of Cranbrook and 21<sup>st</sup> Street and as you work through the development process, you discussed the zoning and protective overlay changes you are requesting to move the project forward with me. I have also received and reviewed the notice from the City. I am in agreement with your zoning and protective overlay change requests.

Best regards,



Sally Andrews

Homeowner

April 5, 2012

To: Mr. Gary Oborny

21Webb LLC

8111 E. 32<sup>nd</sup> St. N., Suite 101

Wichita, KS 67226

From: Fred Hanley, The Quarters at Cambridge LP (35.5%)

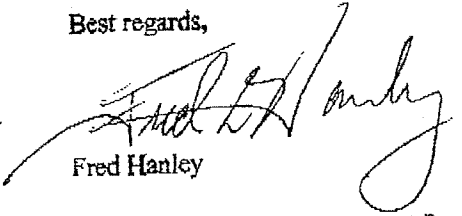
9911 E 21ST ST N                      WICHITA                      67206  
(LOT 3 BLOCK 1 HANLEY 2 ADD)  
9911 E 21ST ST (EXC W 15 FT LOTS 12, 13, 14, 15, 16 & W 15 FT N 185.84 FT RES 1 BLOCK 1)  
9911 E 21ST ST N                      WICHITA                      67206  
(LOT 4 BLOCK 1 HANLEY 2ND ADD)

RE: Zoning and Protective Overlay Change Requests at 21<sup>st</sup> and Cranbrook

Dear Mr. Oborny,

I have received and reviewed the notice from the City of Wichita regarding your proposed changes to the current zoning and protective overlay on the property at the southeast corner of Cranbrook and 21<sup>st</sup> Street. I am aware that 21Webb LLC recently purchased the land and you discussed the zoning and protective overlay changes you are requesting with me. I support your zoning and protective overlay change requests and believe they are consistent with development along this arterial street.

Best regards,



Fred Hanley

Owner, Quarters at Cambridge LP

4-19-12 MAPC

HAND OV.

ITEM # 4

April 13, 2012

To: Mr. Gary Oborny

21Webb LLC

8111 E. 32<sup>nd</sup> St. N., Suite 101

Wichita, KS 67226

From: KENT WILSON

Address: 2243 N STONEYBROOK CT

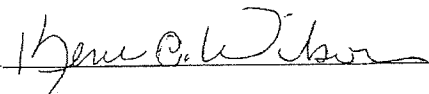
Wichita, KS 67226

RE: Zoning and Protective Overlay Change Requests at 21<sup>st</sup> and Cranbrook

Dear Gary,

I am aware 21Webb LLC recently purchased the land at the southeast corner of Cranbrook and 21<sup>st</sup> Street and as you work through the development process, you discussed the zoning and protective overlay changes you are requesting to move the project forward with me. I have also received and reviewed the notice from the City. I am in agreement with your zoning and protective overlay change requests.

Best regards,



Homeowner

April 6, 2012

To: Mr. Gary Oborny

21 Webb LLC

8111 E. 32<sup>nd</sup> St. N., Suite 101

Wichita, KS 67226

From:

*Janice Garland*

Address:

*2247 Stoneybrook Ct.*

Wichita, KS

*67226*

RE: Zoning and Protective Overlay Change Requests at 21<sup>st</sup> and Cranbrook

Dear Gary,

I am aware 21 Webb LLC recently purchased the land at the southeast corner of Cranbrook and 21<sup>st</sup> Street and as you work through the development process, you discussed the zoning and protective overlay changes you are requesting to move the project forward with me. I have also received and reviewed the notice from the City. I am in agreement with your zoning and protective overlay change requests.

Best regards,

*Janice Garland*

Homeowner



April 5, 2012

Mr. Gary Oborny  
21 Webb LLC  
8111 E. 32<sup>nd</sup> St. N., Suite 101  
Wichita, KS 67226

RE: Zoning and Protective Overlay Change Requests at 21<sup>st</sup> and Cranbrook

Dear Mr. Oborny,

I have received and reviewed the notice from the City of Wichita regarding your proposed changes to the current zoning and protective overlay on the property at the southeast corner of Cranbrook and 21<sup>st</sup> Street. I am aware that 21 Webb LLC recently purchased the land and you discussed the zoning and protective overlay changes you are requesting with me. I support your zoning and protective overlay change requests and believe they are consistent with development along this arterial street.

Best regards,

A handwritten signature in black ink, appearing to read 'Jerry Jones', with a long horizontal flourish extending to the right.

Jerry Jones  
Vice President Commercial Real Estate  
Slawson Real Estate Company



City of Wichita  
City Council Meeting  
May 15, 2012

**TO:** Mayor and City Council

**SUBJECT:** Petition for Sanitary Sewer in Putnam Addition (north of Harry, west of Rock)  
(District II)

**INITIATED BY:** Department of Public Works & Utilities

**AGENDA:** Consent

---

**Recommendation:** Approve the petition.

**Background:** The petition has been signed by one owner representing 100% of the improvement district.

**Analysis:** The project will construct a sanitary sewer for a new commercial development located north of Harry, west of Rock.

**Financial Considerations:** The petition totals \$10,125 with the total paid by special assessments.

**Goal Impact:** This project addresses the Efficient Infrastructure goal by providing a sanitary sewer required for new development.

**Legal Considerations:** The petition and resolution have been approved as to form by the Law Department.

**Recommendation/Action:** It is recommended that the City Council approve the petition, adopt the resolution and authorize the necessary signatures.

**Attachments:** Map, CIP sheet, petition and resolution.

<b>CAPITAL IMPROVEMENT</b>  <b>PROJECT AUTHORIZATION</b>  <b>CITY OF WICHITA</b>																	
USE: To Initiate Project <input checked="checked" type="checkbox"/> X To Revise Project <input type="checkbox"/>				1. Prepare in triplicate 2. Send original & 2 copies to budget. 3. City Manager to sign all copies. 4. File original w/ initiating resolution in City Clerk. 5. Return 2nd copy to initiating department. 6. Send 3rd copy to Controller.													
<b>1. Initiating Department</b>	<b>2. Initiating Division</b>	<b>3. Date</b>	<b>4. Project Description &amp; Location</b>														
Public Works & Utilities	Eng & Arch	4/19/2012	Sanitary Sewer in Putnam Addition														
<b>5. CIP Project Number</b>	<b>6. Accounting Number</b>	<b>7. CIP Project Date (Year)</b>	<b>8. Approved by WCC Date</b>														
NI		2012															
<b>9. Estimated Start Date</b> As Required	<b>10. Estimated Completion Date</b> As Required		<b>11. Project Revised</b>														
<b>12. Project Cost Estimate</b>				<b>12A.</b>													
<b>ITEM</b>	<b>GO</b>	<b>SA</b>	<b>OTHER*</b>	<b>TOTAL</b>													
Right of Way																	
Paving, grading & const.																	
Bridge																	
Drainage																	
Sanitary Sewer		\$10,125		\$10,125													
Sidewalk																	
Water																	
Traffic Signals & Turn Lanes																	
<b>Totals</b>		\$10,125		\$10,125													
<b>Total CIP Amount Budgeted</b>																	
<b>Total Prelim. Estimate</b>																	
<table style="width: 100%; border: none;"> <tr> <td style="width: 50%; vertical-align: top;"> <b>Platting Required</b>   <b>Lot Split</b>   <b>Petition</b>   <b>Ordered by WCC</b> </td> <td style="width: 25%; text-align: center; vertical-align: top;"> <table border="1" style="margin: auto;"> <tr><td style="text-align: center;">Yes</td></tr> <tr><td style="text-align: center;"> </td></tr> <tr><td style="text-align: center;"> </td></tr> <tr><td style="text-align: center;">X</td></tr> <tr><td style="text-align: center;"> </td></tr> </table> </td> <td style="width: 25%; text-align: center; vertical-align: top;"> <table border="1" style="margin: auto;"> <tr><td style="text-align: center;">No</td></tr> <tr><td style="text-align: center;"> </td></tr> <tr><td style="text-align: center;"> </td></tr> <tr><td style="text-align: center;"> </td></tr> <tr><td style="text-align: center;"> </td></tr> </table> </td> </tr> </table>					<b>Platting Required</b>  <b>Lot Split</b>  <b>Petition</b>  <b>Ordered by WCC</b>	<table border="1" style="margin: auto;"> <tr><td style="text-align: center;">Yes</td></tr> <tr><td style="text-align: center;"> </td></tr> <tr><td style="text-align: center;"> </td></tr> <tr><td style="text-align: center;">X</td></tr> <tr><td style="text-align: center;"> </td></tr> </table>	Yes			X		<table border="1" style="margin: auto;"> <tr><td style="text-align: center;">No</td></tr> <tr><td style="text-align: center;"> </td></tr> <tr><td style="text-align: center;"> </td></tr> <tr><td style="text-align: center;"> </td></tr> <tr><td style="text-align: center;"> </td></tr> </table>	No				
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Yes																	
X																	
No																	
<b>Remarks:</b>  <div style="text-align: right;">           100% Petition             *Sanitary Sewer Utility             Lateral 13, Main 11, WIS             468-84828         </div>																	
<b>13. Recommendation: Approve the petition and adopt the resolution</b>																	
<b>Division Head</b>		<b>Department Head</b>		<b>Budget Officer</b>													
<b>Date</b>		<b>Date</b>		<b>Date</b>													

First Published in the Wichita Eagle on May 18, 2012

**RESOLUTION NO. 12-113**

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING CONSTRUCTION OF **LATERAL 13, MAIN 11, WAR INDUSTRIES SEWER (NORTH OF HARRY, WEST OF ROCK) 468-84828** IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF THE CONSTRUCTION OF **LATERAL 13, MAIN 11, WAR INDUSTRIES SEWER (NORTH OF HARRY, WEST OF ROCK) 468-84828** IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That it is necessary and in the public interest to construct **Lateral 13, Main, 11, War Industries Sewer (north of Harry, west of Rock) 468-84828.**

Said sanitary sewer shall be constructed of the material in accordance with plans and specifications provided by the City Engineer.

SECTION 2. That the cost of said improvements provided for in Section 1 hereof is estimated to be **Ten Thousand One Hundred Twenty-Five Dollars (\$10,125)** exclusive of the cost of interest on borrowed money, with **100** percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after **May 1, 2012**, exclusive of the costs of temporary financing.

SECTION 3. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

**PARCEL 'B'**

Lot 1, Putnam Addition, Wichita, Kansas, Sedgwick County, Kansas, EXCEPT the east 44.03 feet of the south 144.25 feet of said Lot 1

SECTION 4. That the method of apportioning all costs of said improvements attributable to the improvement district to the owners of land liable for assessment therefore shall be on a **fractional** basis.

The fractional shares provided for herein have been determined on the basis of equal shares being assessed to lots or parcels of substantially comparable size and/or value: PARCEL "B" shall pay 100 percent of the total cost of the improvements.

In the event all or part of the lots or parcels in the improvement district are replatted before assessments have been levied, the assessments against the replatted area shall be recalculated on the basis of the method of assessment set forth herein. Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis.

SECTION 5. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 6. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 7. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq. as amended.

SECTION 8. Be it further resolved that the above described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 9. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 15th day of May, 2012.

---

CARL BREWER, MAYOR

ATTEST:

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KAREN SUBLETT, CITY CLERK

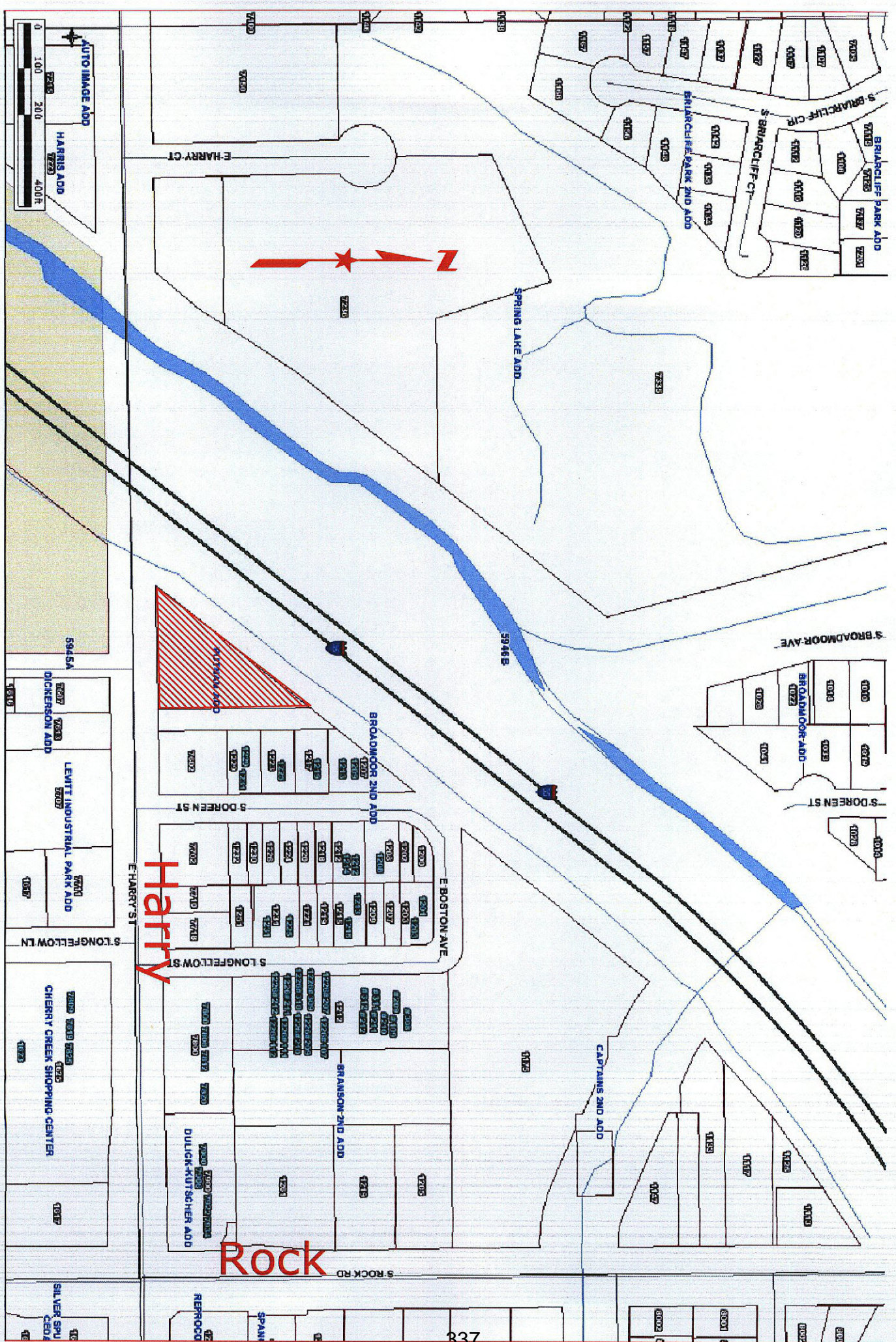
(SEAL)

APPROVED AS TO FORM:

---

GARY E. REBENSTORF  
DIRECTOR OF LAW







RECEIVED

APR 18 '12

SANITARY SEWER PETITION

CITY CLERK OFFICE

To the Mayor and City Council  
Wichita, Kansas

*Lat 13, M11 WIS*

Dear Council Members:

1. We, the undersigned owners of record as below designated, of Lots, Parcels, and Tracts of real property described as follows:

PARCEL 'B'

*468-84828* Lot 1, Putnam Addition, Wichita, Kansas, Sedgwick County, Kansas,  
EXCEPT the east 44.03 feet of the south 144.25 feet of said Lot 1.

do hereby petition pursuant to the provisions of K.S.A. 12-6a01 et seq., as follows:

- North of Harry,  
West of Rock  
Dist II*
- (a) That there be constructed a lateral sanitary sewer to serve the area described above, according to plans and specifications to be furnished by the City Engineer of the City of Wichita, Kansas.
  - (b) That the estimated and probable cost of the improvements is Ten Thousand One Hundred Twenty-Five Dollars (\$10,125.00) exclusive of the cost of interest on borrowed money, with 100 percent payable by the improvement district. Said estimated cost as above set forth may be increased to include temporary interest or finance costs incurred during the course of design and construction of the project, and also may be increased at the pro rata rate of one percent per month from and after May 1, 2012.
  - (c) That the land or area above described be constituted as an improvement district against which shall be assessed 100 percent of the total actual cost of the improvements for which the improvement district is liable.

If this improvement is abandoned, altered and/or constructed privately in part or whole that precludes building this improvement under the authority of this petition, any costs that the City of Wichita incurs shall be assessed to the property described above in accordance with the terms of the petition. In addition, if the improvement is abandoned at any state during the design and/or construction of the improvement or if it is necessary for the City of Wichita to redesign, repair or reconstruct the improvement after its initial design and/or construction because the design or construction does not meet the requirements of the City, then such costs associated with the redesign, repair or reconstruction of said improvement shall be assessed to the property described above in accordance with the terms of this petition.

- (d) That the method of assessment of all costs of the improvements for which the improvement district is liable, shall be on a fractional basis.

The fractional shares provided for herein have been determined on the basis of equal shares being assessed to lots or parcels of substantially comparable size and/or value: PARCEL 'B' shall pay 100 percent of the total cost of the improvements.

In the event all or part of the lots or parcels in the improvement district are replatted before assessments have been levied, the assessments against the replatted area shall be recalculated on the basis of the method of assessment set forth herein. Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis:

2. (a) It is requested that the improvement hereby petitioned be made without notice and hearing, which, but for this request, would be required by K.S.A. 12-6a04. This petition may be combined with other petitions of similar nature to form one public improvement project.
- (b) Signatures on this petition are made with full knowledge and understanding that said signatures constitute a waiver of the limitations contained in K.S.A. 13-1013, which appear to limit the assessment for a lateral sewer to not more than one lateral sewer.

3. That names may not be withdrawn from this petition by the signers thereof after the Governing Body commences consideration of the petition or later than seven (7) days after filing, whichever occurs first.

4. That when this petition has been filed with the City Clerk and it has been certified that the signatures thereon are according to the records of the Register of Deeds of Sedgwick County, Kansas, the petition may be found sufficient if signed by either (1) a majority of the resident owners of record of property liable for assessment under the proposal, or (2) the resident owners of record of more than one-half of the area liable for assessment under the proposal, or (3) the owners of record (whether resident or not) of more than one-half of the area liable for assessment under the proposal. The Governing Body is requested to proceed in the manner provided by statute to the end that the petitioned improvements may be expeditiously completed and placed in use if and when such improvements are necessary to serve any building that may be constructed on the real property after the date on this petition.

WITNESS our signatures attached with respect to each of which is indicated the property owned and the date of signing.

LEGAL DESCRIPTION	SIGNATURE	DATE
<b><u>PARCEL 'B'</u></b>	Janyce L. Putnam Revocable Living Trust under agreement dated February 4, 1993	
	By: <u>Janyce L. Putnam</u> Janyce L. Putnam, Trustee	<u>4/18/12</u>



AFFIDAVIT

The undersigned, being first duly sworn on his oath, states: That he circulated the attached petition and the signatures thereon are the genuine signatures of the persons they support to be to the best of his knowledge and belief, being signed either in the presence of the undersigned or in the resident owners whose signatures appears on the petition.

Judy Jerkine  
Name

Baughman Company, P.A.  
315 Ellis, Wichita, KS 67211  
Address

262-7271  
Telephone No.

Sworn to and subscribed before me this  
2012.

18th day of April



John Edmunds, Jr.  
Deputy City Clerk

## PUTNAM ADDITION

Wichita, Sedgwick County, Kansas

### SANITARY SEWER IMPROVEMENTS

Benefit District:  
Parcel "B"

**Cost Estimate:**

Item	Quantity	Unit	Unit Price	Amount
8" Pipe	50	L.F.	\$40.00	\$2,000.00
Manholes	1	EA.	\$3,000.00	\$3,000.00
Site Clearing and Restoration	1	L.S.	\$2,500.00	\$2,500.00
<b>Subtotal</b>				\$7,500.00
+ 35% Design, Insp., & Administration				\$2,625.00
<b>Total</b>				\$10,125.00

Estimate Amount

\$10,125

**NOTE:**

Site clearing & Restoration includes the following:

1. Remove/replace sidewalk
2. Seeding
3. Temporary erosion control
4. Remove/replace drive pavement as necessary

This estimate does not include service connection fees or main benefit fees.

City of Wichita  
City Council Meeting  
May 15, 2012

**TO:** Mayor and City Council

**SUBJECT:** Petitions for Paving, Sanitary Sewer, Storm Water Drain and Water Distribution System to serve an unplatted tract (south of 47th St. South, west of Hydraulic) (District III)

**INITIATED BY:** Department of Public Works & Utilities

**AGENDA:** Consent

---

**Recommendation:** Approve the petitions.

**Background:** The petitions have been signed by one owner representing 100% of the improvement district.

**Analysis:** The project will provide paving, sanitary sewer, storm water drain and water distribution system to a new commercial development located south of 47th St. South, west of Hydraulic.

**Financial Considerations:** The Petition totals \$2,957,081. The funding source is special assessments.

**Goal Impact:** This project addresses the Efficient Infrastructure goal by providing paving, sanitary sewer, storm water drain and water distribution system required for new development.

**Legal Considerations:** The petitions and resolutions have been approved as to form by the Law Department.

**Recommendations/Actions:** It is recommended that the City Council approve the petitions, adopt the resolutions and authorize the necessary signatures.

**Attachments:** Map, CIP sheet, petitions and resolutions.

<b>CAPITAL IMPROVEMENT</b>  <b>PROJECT AUTHORIZATION</b>  <b>CITY OF WICHITA</b>					USE: To Initiate Project <input checked="checked" type="checkbox"/> X To Revise Project <input type="checkbox"/>	1. Prepare in triplicate 2. Send original & 2 copies to budget. 3. City Manager to sign all copies. 4. File original w/ initiating resolution in City Clerk. 5. Return 2nd copy to initiating department. 6. Send 3rd copy to Controller.														
<b>1. Initiating Department</b> Public Works & Utilities	<b>2. Initiating Division</b> Eng & Arch	<b>3. Date</b> 4/19/2012	<b>4. Project Description &amp; Location</b> Paving in Unplatted Tract A, south of 47th St. South, west of Hydraulic																	
<b>5. CIP Project Number</b> NI-	<b>6. Accounting Number</b>	<b>7. CIP Project Date (Year)</b> 2012	<b>8. Approved by WCC Date</b>																	
<b>9. Estimated Start Date</b> As Required	<b>10. Estimated Completion Date</b> As Required		<b>11. Project Revised</b>																	
<b>12. Project Cost Estimate</b>					<b>12A.</b>															
<b>ITEM</b>	<b>GO</b>	<b>SA</b>	<b>KDOT</b>	<b>TOTAL</b>	<table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 60%;"></th> <th style="width: 20%; text-align: center;">Yes</th> <th style="width: 20%; text-align: center;">No</th> </tr> </thead> <tbody> <tr> <td><b>Platting Required</b></td> <td style="border: 1px solid black; height: 20px;"></td> <td style="border: 1px solid black; height: 20px;"></td> </tr> <tr> <td><b>Lot Split</b></td> <td style="border: 1px solid black; height: 20px;"></td> <td style="border: 1px solid black; height: 20px;"></td> </tr> <tr> <td><b>Petition</b></td> <td style="border: 1px solid black; text-align: center;">X</td> <td style="border: 1px solid black; height: 20px;"></td> </tr> <tr> <td><b>Ordered by WCC</b></td> <td style="border: 1px solid black; height: 20px;"></td> <td style="border: 1px solid black; height: 20px;"></td> </tr> </tbody> </table>		Yes	No	<b>Platting Required</b>			<b>Lot Split</b>			<b>Petition</b>	X		<b>Ordered by WCC</b>		
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<b>Platting Required</b>																				
<b>Lot Split</b>																				
<b>Petition</b>	X																			
<b>Ordered by WCC</b>																				
Right of Way					<b>Remarks:</b>          <div style="text-align: center; font-size: 1.2em;">472-85050</div>															
Paving, grading & const.		\$1,500,000		\$1,500,000																
Bridge																				
Drainage																				
Sanitary Sewer																				
Sidewalk																				
Water																				
Traffic Signals & Turn Lanes																				
<b>Totals</b>		\$1,500,000		\$1,500,000																
<b>Total CIP Amount Budgeted</b>																				
<b>Total Prelim. Estimate</b>																				
<b>13. Recommendation: Approve the petition and adopt the resolution</b>																				
<b>Division Head</b>	<b>Department Head</b>		<b>Budget Officer</b>		<b>City Manager</b>															
			<b>Date</b>		<b>Date</b>															

<b>CAPITAL IMPROVEMENT</b>  <b>PROJECT AUTHORIZATION</b>  <b>CITY OF WICHITA</b>																			
USE: To Initiate Project <input checked="checked" type="checkbox"/> X To Revise Project <input type="checkbox"/>				1. Prepare in triplicate 2. Send original & 2 copies to budget. 3. City Manager to sign all copies. 4. File original w/ initiating resolution in City Clerk. 5. Return 2nd copy to initiating department. 6. Send 3rd copy to Controller.															
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Public Works & Utilities	Eng & Arch	4/19/2012	Sanitary Sewer in Unplatted Tract A, south of 47th St. South, west of Hydraulic																
<b>5. CIP Project Number</b>	<b>6. Accounting Number</b>	<b>7. CIP Project Date (Year)</b>	<b>8. Approved by WCC Date</b>																
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<b>12. Project Cost Estimate</b>				<b>12A.</b>															
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Right of Way																			
Paving, grading & const.																			
Bridge																			
Drainage																			
Sanitary Sewer		\$160,000		\$160,000															
Sidewalk																			
Water																			
Traffic Signals & Turn Lanes																			
<b>Totals</b>		\$160,000		\$160,000															
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Platting Required	<input type="checkbox"/>	<input type="checkbox"/>																	
Lot Split	<input type="checkbox"/>	<input type="checkbox"/>																	
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<b>Division Head</b>		<b>Department Head</b>		<b>Budget Officer</b>															
<b>Date</b>		<b>Date</b>		<b>Date</b>															

CAPITAL IMPROVEMENT														
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1. Initiating Department	2. Initiating Division	3. Date	4. Project Description & Location											
Public Works & Utilities	Eng & Arc	4/19/2012	Storm Water Drain in Unplatted Tract A, south of 47th St. South, west of Hydraulic											
5. CIP Project Number	6. Accounting Number	7. CIP Project Date (Year)	8. Approved by WCC Date											
NL-		2012												
9. Estimated Start Date As Required	10. Estimated Completion Date As Required		11. Project Revised											
12. Project Cost Estimate				12A.										
ITEM	GO	SA	Other	TOTAL										
Right of Way														
Paving, grading & const.														
Bridge & Dam														
Drainage		\$1,165,000		\$1,165,000										
Storm Water Sewer														
Sidewalk														
Water														
Traffic Signals & Turn Lanes														
<b>Totals</b>		\$1,165,000		\$1,165,000										
<b>Total CIP Amount Budgeted</b>														
<b>Total Prelim. Estimate</b>														
Remarks:  <div style="display: flex; justify-content: space-between;"> <div>             100% Petition               *Storm Water Utility               SWD 385               468-84826           </div> <div style="text-align: center;"> <table border="1" style="margin: auto;"> <thead> <tr> <th style="width: 50%;">Yes</th> <th style="width: 50%;">No</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">Platting Required</td> <td></td> </tr> <tr> <td style="text-align: center;">Lot Split</td> <td></td> </tr> <tr> <td style="text-align: center;">Petition</td> <td style="text-align: center;">X</td> </tr> <tr> <td style="text-align: center;">Ordered by WCC</td> <td></td> </tr> </tbody> </table> </div> </div>					Yes	No	Platting Required		Lot Split		Petition	X	Ordered by WCC	
Yes	No													
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Petition	X													
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13. Recommendation: Approve the Petition and adopt the Resolution.														
Division Head	Department Head	Budget Officer	City Manager											

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Public Works & Utilities	Eng & Arch	4/19/2012	Water Distribution System in Unplatted Tract A, south of 47th St. South, west of Hydraulic																
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<b>ITEM</b>	<b>GO</b>	<b>SA</b>	<b>OTHER*</b>	<b>TOTAL</b>															
Right of Way																			
Paving, grading & const.																			
Bridge																			
Drainage																			
Sanitary Sewer																			
Sidewalk																			
Water		\$132,081		\$132,081															
Traffic Signals & Turn Lanes																			
<b>Totals</b>		\$132,081		\$132,081															
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<b>Division Head</b>	<b>Department Head</b>	<b>Budget Officer</b>	<b>City Manager</b>																
<b>Date</b>		<b>Date</b>	<b>Date</b>																

RECEIVED

APR 18 '12

PAVING PETITION

CITY CLERK OFFICE

To the Mayor and City Council  
Wichita, Kansas

Dear Council Members:

1. We, the undersigned owners of record as below designated, of Lots, Parcels, and Tracts of real property described as follows:

Unplatted Tract "A" described as follows:  
See Exhibit "A"

do hereby petition, pursuant to the provisions of K.S.A. 12-6a01 et seq. as amended, as follows:

- 472-85050  
South of 47th St. S  
West of Hydraulic  
Dist. III
- (a) That there be constructed pavement on Washington Street from the south line of 47<sup>th</sup> Street South to a Cul-de-sac, ending at a point 1200' south of the south line of 47<sup>th</sup> Street South. That said pavement between aforesaid limits be constructed with plans and specifications to be furnished by the City Engineer of the City of Wichita, Kansas. Drainage and other public utilities to be installed where necessary.
  - (b) That the estimated and probable cost of the foregoing improvement being ONE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$1,500,000), exclusive of the cost of interest on borrowed money, with 100% percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro rata of 1 percent per month from and after June 1, 2012.
  - (c) That the land or area above described be constituted as an improvement district against which shall be assessed 100 percent of the total actual cost of the improvement for which the improvement district is liable.

If this improvement is abandoned, altered and/or constructed privately in part or whole that precludes building this improvement under the authority of this petition, any costs that the City of Wichita incurs shall be assessed to the property described above in accordance with the terms of the petition. In addition, if the improvement is abandoned at any state during the design and/or construction of the improvement or if it is necessary for the City of Wichita to redesign, repair or reconstruct the improvement after its initial design and/or construction because the design or construction does not meet the requirements of the City, then such costs associated with the redesign, repair or reconstruction of said improvement shall be assessed to the property described above in accordance with the terms of this petition.



- (d) That the method of assessment of all costs of the improvement for which the improvement district shall be liable shall be on a fractional basis.

Unplatted Tract "A" shall pay 1,000/1,000 of the total cost of the improvements.

Above described improvement district shall pay 100% of the improvement cost.

Where the ownership of a single lot or tract is or may be divided into two or more parcels, the assessment to the lot or tract so divided shall be assessed to each ownership or parcel on a square foot basis.

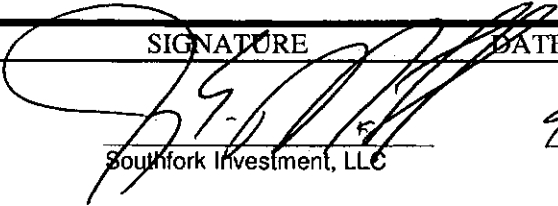
Except when driveways are requested to serve a particular tract, lot, or parcel, the cost of said driveway shall be in addition to the assessment to said tract, lot, or parcel and shall be in addition to the assessment for other improvements. Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis.

2. It is requested that the improvements hereby petitioned be made without notice and hearing, which but for this request, would be required by K.S.A. 12-6a04.

3. That names may not be withdrawn from this petition by the signers thereof after the Governing body commences consideration of the petition or later than seven (7) days after filing, whichever comes first.

4. That when this petition has been filed with the City Clerk and it has been certified that the signatures thereon are according to the records of the Register of Deeds of Sedgwick County, Kansas, the petition may be found sufficient if signed by either (1) a majority of the resident owners of record of property liable for assessment under the proposal, or (2) the resident owners of record of more than one-half of the area liable for assessment under the proposal, or (3) the owners of record (whether resident or not) of more than one-half of the area liable for assessment under the proposal. The Governing Body is requested to proceed in the manner provided by statute to the end that the petitioned improvements may be expeditiously completed and placed in use.

WITNESS our signatures attached with respect to each of which is indicated the property owned and the date of signing.

LEGAL DESCRIPTION	SIGNATURE	DATE
Unplatted Tract "A"	 Southfork Investment, LLC	4-17-12

**Exhibit "A"**

A Tract of land in the North Half of Section 21, Township 28 South, Range 1 East of the Sixth Principal Meridian, Sedgwick County, Kansas described as follows:

Commencing at the Northwest Corner of the Northwest Quarter of Section 21, Township 28 South, Range 1 East of the Sixth Principal Meridian, Sedgwick County, Kansas, thence along an assumed bearing of N89° 31' 13"E on the North line of said Northwest Quarter for 2295.74 feet to a point, thence S0° 28' 47"E for 155.50 feet to the point of beginning on the Kansas Department of Transportation right-of-way line as described in the Quit Claim Deed recorded as DOC.#/FLM-PG: 29162038, thence S19°28'47"E a distance of 393.37 feet to a point on the Kansas Department of Transportation right-of-way line as described in the Deed recorded in Deed Book 1351 at page 253, thence S 6°26'53"E a distance of 129.68 feet, thence S19°28'47"E a distance of 1465.35 feet to a point on the right-of-way line of the Kansas Turnpike Authority as described in condemnation case A-55279, thence along said Kansas Turnpike Authority right-of-way line S8°42'58"W a distance of 579.10 feet to a point on the South line of the Northeast Quarter of Section 21, Township 28 South, Range 1 East, thence S88°50'51"W along the South line of said Northeast Quarter a distance of 176.00 feet to the Southwest corner of said Northeast Quarter, thence S88°50'53"W along the South line of the Northwest Quarter of Section 21, Township 28 South, Range 1 East a distance of 792.71 feet to a point on the East line of the Riverside Drainage District easement as recorded in Deed Book 432 at page 162, thence N2°01'29"E along said Riverside Drainage District easement a distance of 263.56 feet to a point of curvature, thence continuing along the Riverside Drainage District easement along a curve to the left, having a radius of 2084.33 feet a delta angle of 10°01'53", for an arc distance of 364.93 feet to a point of tangency, thence continuing along said Riverside Drainage District easement N8°00'24"W a distance of 699.38 feet to a point, thence continuing along said Riverside Drainage District easement N6°12'07"W a distance of 1154.42 feet to a point on the Kansas Department of Transportation right-of-way line as described in the Quit Claim Deed recorded as DOC.#/FLM-PG: 29162038, thence along said Kansas Department of Transportation right-of-way line bearing N89°31'13"E a distance of 653.73 feet to the point of beginning.

Said tract contains 50.389 acres, more or less.

AFFIDAVIT

The undersigned, being first duly sworn on his oath, states: That he circulated the attached petition and that the signatures thereon are the genuine signatures of the persons they purport to be to the best of his knowledge and belief, being signed either in the presence of the undersigned or in the presence of one of the resident owners whose signature appears on the petition.

Julianne Kallman  
Name

455 N. Main  
Address

268-4236  
Telephone Number

Sworn to and subscribed before me this 18 day of April, 2012.



John Edwards  
Deputy City Clerk

RECEIVED

APR 18 '12

CITY CLERK OFFICE

SANITARY SEWER PETITION

To the Mayor and City Council  
Wichita, Kansas

*Lat 37, M2, SW1*

Dear Council Members:

1. We, the undersigned owners of record as below designated, of Lots, Parcels, and Tracts of real property described as follows:

Unplatted Tract "A" described as follows:  
See Exhibit "A"

do hereby petition pursuant to the provisions of K.S.A. 12-6a01 et seq., as amended:

- 468-84825
- South of 47<sup>th</sup> St. S,  
West of Hydraulic  
Dist. III*
- (a) That there be constructed a lateral sanitary sewer to serve the area described above, according to plans and specifications to be furnished by the City Engineer of the City of Wichita, Kansas.
  - (b) That the estimated and probable cost of the foregoing improvements being ONE HUNDRED SIXTY THOUSAND DOLLARS (\$160,000), exclusive of the cost of interest on borrowed money, with 100 percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro rata rate of 1 percent per month from and after June 1, 2012.
  - (c) That the land or area above described be constituted as an improvement district against which shall be assessed 100 percent of the total actual cost of the improvement for which the improvement district is liable.

If this improvement is abandoned, altered and/or constructed privately in part or whole that precludes building this improvement under the authority of this petition, any costs that the City of Wichita incurs shall be assessed to the property described above in accordance with the terms of the petition. In addition, if the improvement is abandoned at any state during the design and/or construction of the improvement or if it is necessary for the City of Wichita to redesign, repair or reconstruct the improvement after its initial design and/or construction because the design or construction does not meet the requirements of the City, then such costs associated with the redesign, repair or reconstruction of said improvement shall be assessed to the property described above in accordance with the terms of this petition.


- (d) That the method of assessment of all costs of the improvement for which the improvement district shall be liable shall be on a fractional basis:

Unplatted Tract "A" shall pay 1,000/1,000 of the total cost of the improvements.

Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis.

2. (a) It is requested that the improvement hereby petitioned be made without notice and hearing, which, but for this request, would be required by K.S.A. 12-6a04. This petition may be combined with other petitions of similar nature to form one public improvement project.
  - (b) Signatures on this petition are made with full knowledge and understanding that said signatures constitute a waiver of the limitations contained in K.S.A. 13-1013, which appear to limit the assessment for a lateral sewer to not more than one lateral sewer.
3. That names may not be withdrawn from this petition by the signers thereof after the Governing Body commences consideration of the petition or later than seven (7) days after filing, whichever occurs first.
4. That when this petition has been filed with the City Clerk and it has been certified that the signatures thereon are according to the records of the Register of Deeds of Sedgwick County, Kansas, the petition may be found sufficient if signed by either (1) a majority of the resident owners of record of property liable for assessment under the proposal, or (2) the resident owners of record of more than one-half of the area liable for assessment under the proposal, or (3) the owners of record (whether resident or not) of more than one-half of the area liable for assessment under the proposal. The Governing Body is requested to proceed in the manner provided by statute to the end that the petitioned improvements may be expeditiously completed and placed in use if and when such improvements are necessary to serve any building that may be constructed on the real property after the date on this petition.

WITNESS our signatures attached with respect to each of which is indicated the property owned and the date of signing.

LEGAL DESCRIPTION	SIGNATURE	DATE
Unplatted Tract "A"	 Southfork Investment, LLC	4-17-12

**Exhibit "A"**

A Tract of land in the North Half of Section 21, Township 28 South, Range 1 East of the Sixth Principal Meridian, Sedgwick County, Kansas described as follows:

Commencing at the Northwest Corner of the Northwest Quarter of Section 21, Township 28 South, Range 1 East of the Sixth Principal Meridian, Sedgwick County, Kansas, thence along an assumed bearing of N89° 31' 13"E on the North line of said Northwest Quarter for 2295.74 feet to a point, thence S0° 28' 47"E for 155.50 feet to the point of beginning on the Kansas Department of Transportation right-of-way line as described in the Quit Claim Deed recorded as DOC.#/FLM-PG: 29162038, thence S19°28'47"E a distance of 393.37 feet to a point on the Kansas Department of Transportation right-of-way line as described in the Deed recorded in Deed Book 1351 at page 253, thence S 6°26'53"E a distance of 129.68 feet, thence S19°28'47"E a distance of 1465.35 feet to a point on the right-of-way line of the Kansas Turnpike Authority as described in condemnation case A-55279, thence along said Kansas Turnpike Authority right-of-way line S8°42'58"W a distance of 579.10 feet to a point on the South line of the Northeast Quarter of Section 21, Township 28 South, Range 1 East, thence S88°50'51"W along the South line of said Northeast Quarter a distance of 176.00 feet to the Southwest corner of said Northeast Quarter, thence S88°50'53"W along the South line of the Northwest Quarter of Section 21, Township 28 South, Range 1 East a distance of 792.71 feet to a point on the East line of the Riverside Drainage District easement as recorded in Deed Book 432 at page 162, thence N2°01'29"E along said Riverside Drainage District easement a distance of 263.56 feet to a point of curvature, thence continuing along the Riverside Drainage District easement along a curve to the left, having a radius of 2084.33 feet a delta angle of 10°01'53", for an arc distance of 364.93 feet to a point of tangency, thence continuing along said Riverside Drainage District easement N8°00'24"W a distance of 699.38 feet to a point, thence continuing along said Riverside Drainage District easement N6°12'07"W a distance of 1154.42 feet to a point on the Kansas Department of Transportation right-of-way line as described in the Quit Claim Deed recorded as DOC.#/FLM-PG: 29162038, thence along said Kansas Department of Transportation right-of-way line bearing N89°31'13"E a distance of 653.73 feet to the point of beginning.

Said tract contains 50.389 acres, more or less



AFFIDAVIT

The undersigned, being first duly sworn on his oath, states: That he circulated the attached petition and that the signatures thereon are the genuine signatures of the persons they purport to be to the best of his knowledge and belief, being signed either in the presence of the undersigned or in the presence of one of the resident owners whose signature appears on the petition.

Julianne Kallman  
Name

455 N. Main  
Address

268-4236  
Telephone Number

Sworn to and subscribed before me this 18th day of April, 2012.



Paul Edwards  
Deputy City Clerk

RECEIVED

APR 18 '12

WATER MAIN PETITION

CITY CLERK OFFICE

To the Mayor and City Council  
Wichita, Kansas

Dear Council Members:

1. We, the undersigned owners of record as below designated, of Lots, Parcels, and Tracts of real property described as follows:

Unplatted Tract "A" described as follows:  
See Exhibit "A"

do hereby petition, pursuant to the provisions of K.S.A. 12-6a01 et seq. as amended, as follows:

- 448-90558  
South of 47<sup>th</sup> St. S,  
West of Hydraulic  
Dist. III
- (a) That there be constructed a water main, valves, fire hydrants, and appurtenances on Washington Street from the south line of 47<sup>th</sup> Street South to a cul-de-sac, ending at a point 1200' south of the the south line of 47<sup>th</sup> Street. That said improvements be constructed with plans and specifications to be furnished by the City Engineer of the City of Wichita, Kansas.
  - (b) That the estimated and probable cost of the foregoing improvement being SEVENTY FIVE THOUSAND DOLLARS (\$75,000), exclusive of the cost of interest on borrowed money, with 100% percent payable by the improvement district. Said estimated cost as above setforth is hereby increased at the pro rata of 1 percent per month from and after June 1, 2012.
  - (c) That, in accordance with the provisions of K.S.A. 12-6a19, a benefit fee be assessed against the improvement district with respect to the improvement district's share of the cost of the existing water main benefit fee, such benefit fee to be in the amount of FIFTY SEVEN THOUSAND EIGHTY ONE DOLLARS (\$57,081).
  - (d) That the land or area above described be constituted as an improvement district against which shall be assessed 100 percent of the total actual cost of the improvement for which the improvement district is liable.

If this improvement is abandoned, altered and/or constructed privately in part or whole that precludes building this improvement under the authority of this petition, any costs that the City of Wichita incurs shall be assessed to the property described above in accordance with the terms of the petition. In addition, if the improvement is abandoned at any state during the design and/or construction of the improvement or if it is necessary for the City of Wichita to redesign, repair or reconstruct the improvement after its initial

design and/or construction because the design or construction does not meet the requirements of the City, then such costs associated with the redesign, repair or reconstruction of said improvement shall be assessed to the property described above in accordance with the terms of this petition.

- (d) That the method of assessment of all costs of the improvement for which the improvement district shall be liable shall be on a fractional basis.

Unplatted Tract "A" shall pay 1,000/1,000 of the total cost of the improvements.

Above described improvement district shall pay 100% of the improvement cost.

Where the ownership of a single lot or tract is or may be divided into two or more parcels, the assessment to the lot or tract so divided shall be assessed to each ownership or parcel on a square foot basis.


Except when driveways are requested to serve a particular tract, lot, or parcel, the cost of said driveway shall be in addition to the assessment to said tract, lot, or parcel and shall be in addition to the assessment for other improvements. Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis.

2. It is requested that the improvements hereby petitioned be made without notice and hearing, which but for this request, would be required by K.S.A. 12-6a04.

3. That names may not be withdrawn from this petition by the signers thereof after the Governing body commences consideration of the petition or later than seven (7) days after filing, whichever comes first.

4. That when this petition has been filed with the City Clerk and it has been certified that the signatures thereon are according to the records of the Register of Deeds of Sedgwick County, Kansas, the petition may be found sufficient if signed by either (1) a majority of the resident owners of record of property liable for assessment under the proposal, or (2) the resident owners of record of more than one-half of the area liable for assessment under the proposal, or (3) the owners of record (whether resident or not) of more than one-half of the area liable for assessment under the proposal. The Governing Body is requested to proceed in the manner provided by statute to the end that the petitioned improvements may be expeditiously completed and placed in use.

WITNESS our signatures attached with respect to each of which is indicated the property owned and the date of signing.

LEGAL DESCRIPTION	SIGNATURE	DATE
Uplatted Tract "A"	 Southfork Investment, LLC	<u>4-17-12</u>

### Exhibit "A"

A Tract of land in the North Half of Section 21, Township 28 South, Range 1 East of the Sixth Principal Meridian, Sedgwick County, Kansas described as follows:

Commencing at the Northwest Corner of the Northwest Quarter of Section 21, Township 28 South, Range 1 East of the Sixth Principal Meridian, Sedgwick County, Kansas, thence along an assumed bearing of N89° 31' 13"E on the North line of said Northwest Quarter for 2295.74 feet to a point, thence S0° 28' 47"E for 155.50 feet to the point of beginning on the Kansas Department of Transportation right-of-way line as described in the Quit Claim Deed recorded as DOC. #/FLM-PG: 29162038, thence S19°28'47"E a distance of 393.37 feet to a point on the Kansas Department of Transportation right-of-way line as described in the Deed recorded in Deed Book 1351 at page 253, thence S 6°26'53"E a distance of 129.68 feet, thence S19°28'47"E a distance of 1465.35 feet to a point on the right-of-way line of the Kansas Turnpike Authority as described in condemnation case A-55279, thence along said Kansas Turnpike Authority right-of-way line S8°42'58"W a distance of 579.10 feet to a point on the South line of the Northeast Quarter of Section 21, Township 28 South, Range 1 East, thence S88°50'51"W along the South line of said Northeast Quarter a distance of 176.00 feet to the Southwest corner of said Northeast Quarter, thence S88°50'53"W along the South line of the Northwest Quarter of Section 21, Township 28 South, Range 1 East a distance of 792.71 feet to a point on the East line of the Riverside Drainage District easement as recorded in Deed Book 432 at page 162, thence N2°01'29"E along said Riverside Drainage District easement a distance of 263.56 feet to a point of curvature, thence continuing along the Riverside Drainage District easement along a curve to the left, having a radius of 2084.33 feet a delta angle of 10°01'53", for an arc distance of 364.93 feet to a point of tangency, thence continuing along said Riverside Drainage District easement N8°00'24"W a distance of 699.38 feet to a point, thence continuing along said Riverside Drainage District easement N6°12'07"W a distance of 1154.42 feet to a point on the Kansas Department of Transportation right-of-way line as described in the Quit Claim Deed recorded as DOC. #/FLM-PG: 29162038, thence along said Kansas Department of Transportation right-of-way line bearing N89°31'13"E a distance of 653.73 feet to the point of beginning.

Said tract contains 50.389 acres, more or less.

AFFIDAVIT

The undersigned, being first duly sworn on his oath, states: That he circulated the attached petition and that the signatures thereon are the genuine signatures of the persons they purport to be to the best of his knowledge and belief, being signed either in the presence of the undersigned or in the presence of one of the resident owners whose signature appears on the petition.

Julianne Kallman  
Name

455 N. Main  
Address

268-4236  
Telephone Number

Sworn to and subscribed before me this 18<sup>th</sup> day of April, 2012.



John Edwards  
Deputy City Clerk

RECEIVED

MAY 07 '12

DRAINAGE PETITION

CITY CLERK OFFICE

To the Mayor and City Council  
Wichita, Kansas

Dear Council Members:

1. We, the undersigned owners of record as below designated, of Lots, Parcels, and Tracts of real property described as follows:

Unplatted Tract "A" described as follows:  
See Exhibit "A"

do hereby petition pursuant to the provisions of K.S.A. 12-6a01 et seq., as follows:

- 468-84826  
South of 47th St. S.,  
West of Hydraulic  
Dist III
- (a) That drainage improvements including mass grading, retaining wall, landscaping, seeding, erosion control and related appurtenances be constructed on and to serve the area described above, according to plans and specifications to be furnished by the City Engineer of the City of Wichita, Kansas.
  - (b) That the estimated and probable cost of the foregoing improvements being ONE MILLION ONE HUNDRED SIXTY FIVE THOUSAND DOLLARS (\$1,165,000), exclusive of the cost of interest on borrowed money, with 100 percent payable by the improvement district. Said estimated cost as above set forth may be increased to include temporary interest or finance costs incurred during the course of design and construction of the project, and also may be increased at the pro rata rate of 1 percent per month from and after June 1, 2012.
  - (c) That the land or area above described be constituted as an improvement district against which shall be assessed 100 percent of the total actual cost of the improvement for which the improvement district is liable.

If this improvement: (i) is abandoned, altered and/or constructed privately in part or whole that precludes building this improvement under the authority of this petition, or (ii) is abandoned at any state during the design and/or construction of the improvement, or (iii) requires the redesign, repair or reconstruction by the City of Wichita after its initial design or construction because the design or construction does not meet the requirements of the City; then in any of the foregoing events the Developers' Agreement shall control."

- (d) That the method of assessment of all costs of the improvement for which the improvement district shall be liable shall be on a fractional basis:

Unplatted Tract "A" shall pay 1,000/1,000 of the total cost of the improvements.

Where the ownership of Tract is divided into two or more parcels, the assessment to the lot so divided shall be assessed to each owner or parcel within such subdivided tract on a square foot basis.

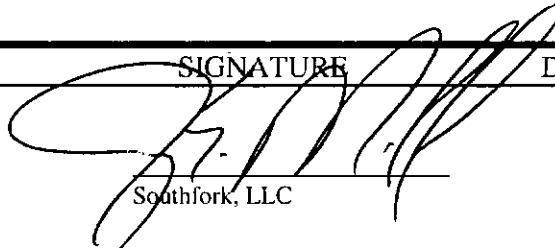
2. It is requested that the improvement hereby petitioned be made without notice and hearing, which, but for this request, would be required by K.S.A. 12-6a04.

3. That names may not be withdrawn from this petition by the signers thereof after the Governing Body commences consideration of the petition or later than seven (7) days after filing, whichever occurs first.

4. That when this petition has been filed with the City Clerk and it has been certified that the signatures thereon are according to the records of the Register of Deeds of Sedgwick County, Kansas, the petition may be found sufficient if signed by either (1) a majority of the resident owners of record of property liable for assessment under the proposal, or (2) the resident owners of record of more than one-half of the area liable for assessment under the proposal, or (3) the owners of record (whether resident or not)<sup>2</sup> of more than one-half of the area liable for assessment under the proposal. The Governing Body is requested to proceed in the manner provided by statute to the end that the petitioned improvements may be expeditiously completed and placed in use if and when such improvements are necessary to serve any building that may be constructed on the real property after the date on this petition.



WITNESS our signatures attached with respect to each of which is indicated the property owned and the date of signing.

LEGAL DESCRIPTION	SIGNATURE	DATE
Unplatted Tract "A"	 Southfork, LLC	<u>4-17-12</u>
State of Kansas) Sedgwick County)		

### Exhibit "A"

A Tract of land in the North Half of Section 21, Township 28 South, Range 1 East of the Sixth Principal Meridian, Sedgwick County, Kansas described as follows:

Commencing at the Northwest Corner of the Northwest Quarter of Section 21, Township 28 South, Range 1 East of the Sixth Principal Meridian, Sedgwick County, Kansas, thence along an assumed bearing of N89° 31' 13"E on the North line of said Northwest Quarter for 2295.74 feet to a point, thence S0° 28' 47"E for 155.50 feet to the point of beginning on the Kansas Department of Transportation right-of-way line as described in the Quit Claim Deed recorded as DOC.#/FLM-PG: 29162038, thence S19°28'47"E a distance of 393.37 feet to a point on the Kansas Department of Transportation right-of-way line as described in the Deed recorded in Deed Book 1351 at page 253, thence S 6°26'53"E a distance of 129.68 feet, thence S19°28'47"E a distance of 1465.35 feet to a point on the right-of-way line of the Kansas Turnpike Authority as described in condemnation case A-55279, thence along said Kansas Turnpike Authority right-of-way line S8°42'58"W a distance of 579.10 feet to a point on the South line of the Northeast Quarter of Section 21, Township 28 South, Range 1 East, thence S88°50'51"W along the South line of said Northeast Quarter a distance of 176.00 feet to the Southwest corner of said Northeast Quarter, thence S88°50'53"W along the South line of the Northwest Quarter of Section 21, Township 28 South, Range 1 East a distance of 792.71 feet to a point on the East line of the Riverside Drainage District easement as recorded in Deed Book 432 at page 162, thence N2°01'29"E along said Riverside Drainage District easement a distance of 263.56 feet to a point of curvature, thence continuing along the Riverside Drainage District easement along a curve to the left, having a radius of 2084.33 feet a delta angle of 10°01'53", for an arc distance of 364.93 feet to a point of tangency, thence continuing along said Riverside Drainage District easement N8°00'24"W a distance of 699.38 feet to a point, thence continuing along said Riverside Drainage District easement N6°12'07"W a distance of 1154.42 feet to a point on the Kansas Department of Transportation right-of-way line as described in the Quit Claim Deed recorded as DOC.#/FLM-PG: 29162038, thence along said Kansas Department of Transportation right-of-way line bearing N89°31'13"E a distance of 653.73 feet to the point of beginning.

Said tract contains 50.389 acres, more or less

AFFIDAVIT

The undersigned, being first duly sworn on his oath, states: That he circulated the attached petition and that the signatures thereon are the genuine signatures of the persons they purport to be to the best of his knowledge and belief.

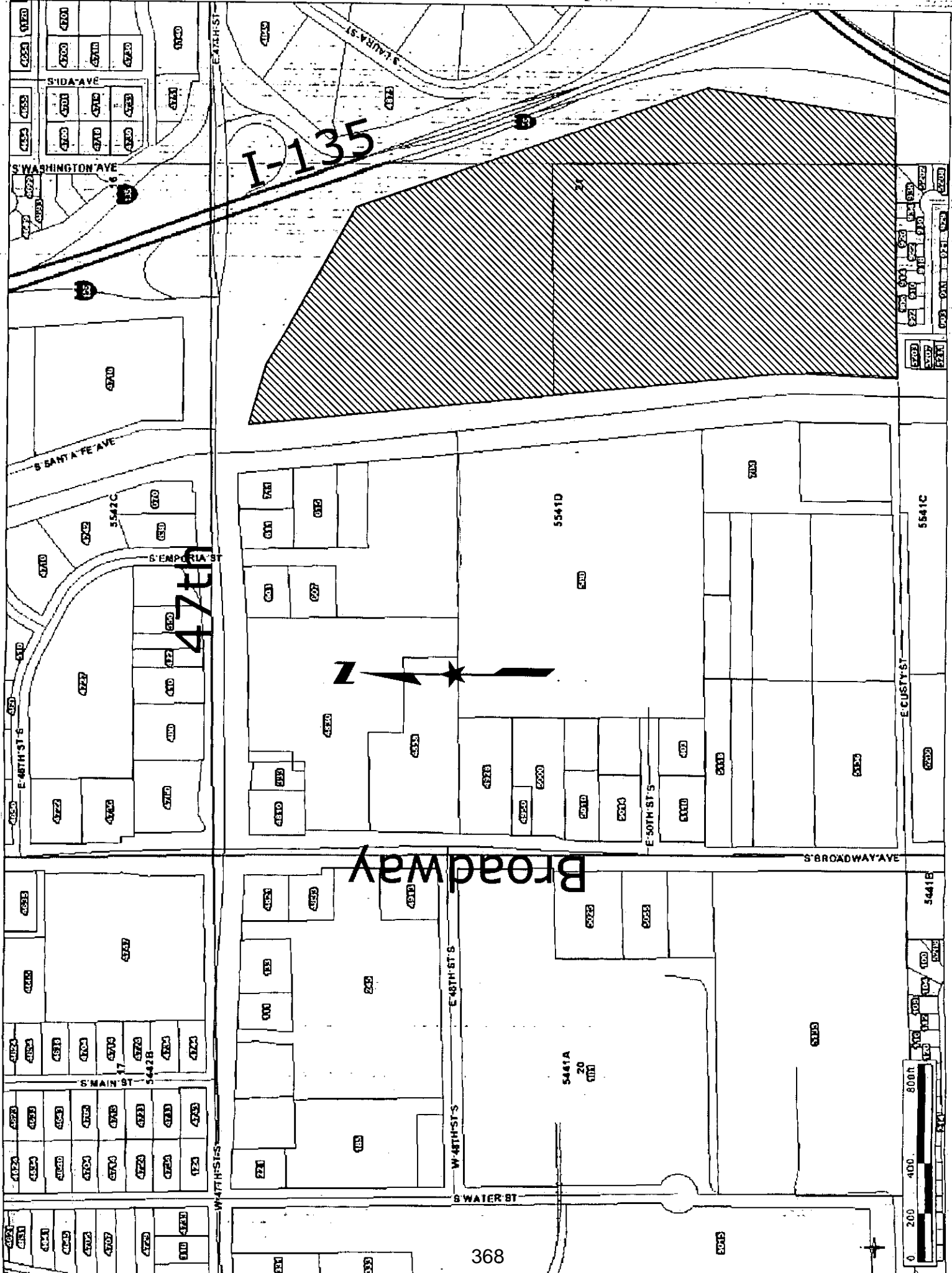
Kim Pelton  
Name

455 N. Main St.  
Address

268-4499  
Telephone Number

Sworn to and subscribed before me this 7 day of May, 2012.

Ann Edwards  
Deputy City Clerk



I-135



Broadway

47th

368



132019

First Published in the Wichita Eagle on May 18, 2012

**RESOLUTION NO. 12-114**

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING CONSTRUCTING PAVEMENT ON WASHINGTON STREET FROM THE SOUTH LINE OF 47TH STREET SOUTH TO A CUL-DE-SAC, ENDING AT A POINT 1200' SOUTH OF THE SOUTH LINE OF 47TH STREET SOUTH (SOUTH OF 47TH ST. SOUTH, WEST OF HYDRAULIC), 472-85050 IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF AUTHORIZING CONSTRUCTING PAVEMENT ON WASHINGTON STREET FROM THE SOUTH LINE OF 47TH STREET SOUTH TO A CUL-DE-SAC, ENDING AT A POINT 1200' SOUTH OF THE SOUTH LINE OF 47TH STREET SOUTH (SOUTH OF 47TH ST. SOUTH, WEST OF HYDRAULIC), 472-85050 IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That it is necessary and in the public interest to pave Washington Street from the south line of 47th Street South to a cul-de-sac, ending at a point 1200' south of the south line of 47th Street South (south of 47th St. South, west of Hydraulic), 472-85050.

Said pavement shall be constructed of the material in accordance with plans and specifications provided by the City Engineer.

SECTION 2. That the cost of said improvements provided for in Section 1 hereof is estimated to be **One Million Five Hundred Thousand Dollars (\$1,500,000.00)** exclusive of the cost of interest on borrowed money, with 100 Percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after **June 1, 2012**, exclusive of the costs of temporary financing.

SECTION 3. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

### **UNPLATTED TRACT "A"**

A Tract of land in the North Half of Section 21, Township 28 South, Range 1 East of the Sixth Principal Meridian, Sedgwick County, Kansas described as follows:

Commencing at the Northwest Corner of the Northwest Quarter of Section 21, Township 28 South, Range 1 East of the Sixth Principal Meridian, Sedgwick County, Kansas, thence along an assumed bearing of N89° 31' 13"E on the North line of said Northwest Quarter for 2295.74 feet to a point, thence S0° 28' 47"E for 155.50 feet to the point of beginning on the Kansas Department of Transportation right-of-way line as described in the Quit Claim Deed recorded as DOC.#/FLM-PG: 29162038, thence S19°28'47"E a distance of 393.37 feet to a point on the Kansas Department of Transportation right-of-way line as described in the Deed recorded in Deed Book 1351 at page 253, thence S 6°26'53"E a distance of 129.68 feet, thence S19°28'47"E a distance of 1465.35 feet to a point on the right-of-way line of the Kansas Turnpike Authority as described in condemnation case A-55279, thence along said Kansas Turnpike Authority right-of-way line S8°42'58"W a distance of 579.10 feet to a point on the South line of the Northeast Quarter of Section 21, Township 28 South, Range 1 East, thence S88°50'51"W along the South line of said Northeast Quarter a distance of 176.00 feet to the Southwest corner of said Northeast Quarter, thence S88°50'53"W along the South line of the Northwest Quarter of Section 21, Township 28 South, Range 1 East a distance of 792.71 feet to a point on the East line of the Riverside Drainage District easement as recorded in Deed Book 432 at page 162, thence N2°01'29"E along said Riverside Drainage District easement a distance of 263.56 feet to a point of curvature, thence continuing along the Riverside Drainage District easement along a curve to the left, having a radius of 2084.33 feet a delta angle of 10°01'53", for an arc distance of 364.93 feet to a point of tangency, thence continuing along said Riverside Drainage District easement N8°00'24"W a distance of 699.38 feet to a point, thence continuing along said Riverside Drainage District easement N6°12'07"W a distance of 1154.42 feet to a point on the Kansas Department of Transportation right-of-way line as described in the Quit Claim Deed recorded as DOC.#/FLM-PG: 29162038, thence along said Kansas Department of Transportation right-of-way line bearing N89°31'13"E a distance of 653.73 feet to the point of beginning.

Said tract contains 50.389 acres, more or less.

SECTION 4. That the method of apportioning all costs of said improvements attributable to the improvement district to the owners of land liable for assessment therefore shall be on a fractional basis.

The method of assessment of all costs of the improvement for which the improvement district shall be liable shall be on a fractional basis: UNPLATTED TRACT "A" shall pay 1,000/1,000 of the total cost of the improvements.

Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis. Except when driveways are requested to serve a particular tract, lot or parcel, the cost of said driveway shall be in addition to the assessment for other improvements.

SECTION 5. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 6. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 7. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 1980 Supp. 12-6a01 et seq.

SECTION 8. Be it further resolved that the above described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 9. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas this 15th day of  
May, 2012.

---

CARL BREWER, MAYOR

ATTEST:

---

KAREN SUBLETT, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

---

GARY E. REBENSTORF  
DIRECTOR OF LAW

First Published in the Wichita Eagle on May 18, 2012

**RESOLUTION NO. 12-115**

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING CONSTRUCTION OF **LATERAL 37, MAIN 2, SOUTHWEST INTERCEPTOR SEWER (SOUTH OF 47TH ST. SOUTH, WEST OF HYDRAULIC) 468-84825** IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF THE CONSTRUCTION OF **LATERAL 37, MAIN 2, SOUTHWEST INTERCEPTOR SEWER (SOUTH OF 47TH ST. SOUTH, WEST OF HYDRAULIC) 468-84825** IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That it is necessary and in the public interest to construct **Lateral 37, Main 2, Southwest Interceptor Sewer (south of 47th St. South, west of Hydraulic) 468-84825**.

Said sanitary sewer shall be constructed of the material in accordance with plans and specifications provided by the City Engineer.

SECTION 2. That the cost of said improvements provided for in Section 1 hereof is estimated to be **One Hundred Sixty Thousand Dollars (\$160,000)** exclusive of the cost of interest on borrowed money, with **100** percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after **June 1, 2012**, exclusive of the costs of temporary financing.

SECTION 3. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

**UNPLATTED TRACT "A"**

A Tract of land in the North Half of Section 21, Township 28 South, Range 1 East of the Sixth Principal Meridian, Sedgwick County, Kansas described as follows:

Commencing at the Northwest Corner of the Northwest Quarter of Section 21, Township 28 South, Range 1 East of the Sixth Principal Meridian, Sedgwick County, Kansas, thence along an assumed bearing of N89° 31' 13"E on the North line of said Northwest Quarter for 2295.74 feet to a point, thence S0° 28' 47"E for 155.50 feet to the point of beginning on the Kansas Department of Transportation right-of-way line as described in the Quit Claim Deed recorded as DOC.#/FLM-PG: 29162038, thence S19°28'47"E a distance of 393.37 feet to a point on the Kansas Department of Transportation right-of-way line as described in the Deed recorded in Deed Book 1351 at page 253, thence S 6°26'53"E a distance of 129.68 feet, thence S19°28'47"E a distance of 1465.35 feet to a point on the right-of-way line of the Kansas Turnpike Authority as described in condemnation case A-55279, thence along said Kansas Turnpike Authority right-of-way line S8°42'58"W a distance of 579.10 feet to a point on the South line of the Northeast Quarter of Section 21, Township 28 South, Range 1 East, thence S88°50'51"W along the South line of said Northeast Quarter a distance of 176.00 feet to the Southwest



corner of said Northeast Quarter, thence S88°50'53"W along the South line of the Northwest Quarter of Section 21, Township 28 South, Range 1 East a distance of 792.71 feet to a point on the East line of the Riverside Drainage District easement as recorded in Deed Book 432 at page 162, thence N2°01'29"E along said Riverside Drainage District easement a distance of 263.56 feet to a point of curvature, thence continuing along the Riverside Drainage District easement along a curve to the left, having a radius of 2084.33 feet a delta angle of 10°01'53", for an arc distance of 364.93 feet to a point of tangency, thence continuing along said Riverside Drainage District easement N8°00'24"W a distance of 699.38 feet to a point, thence continuing along said Riverside Drainage District easement N6°12'07"W a distance of 1154.42 feet to a point on the Kansas Department of Transportation right-of-way line as described in the Quit Claim Deed recorded as DOC.#/FLM-PG: 29162038, thence along said Kansas Department of Transportation right-of-way line bearing N89°31'13"E a distance of 653.73 feet to the point of beginning.

Said tract contains 50.389 acres, more or less.

SECTION 4. That the method of apportioning all costs of said improvements attributable to the improvement district to the owners of land liable for assessment therefore shall be on a **fractional** basis.

That the method of assessment of all costs of the improvement for which the improvement district shall be liable shall be on a fractional basis: UNPLATTED TRACT "A" shall pay 1,000/1,000 of the total cost of the improvements.

Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis or by the provisions of a valid re-spread agreement submitted at the time of division.

SECTION 5. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 6 That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 7. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq., as amended.

SECTION 8. Be it further resolved that the above described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 9. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 15th day of May, 2012.

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CARL BREWER, MAYOR

ATTEST:

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KAREN SUBLETT, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

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GARY E. REBENSTORF  
DIRECTOR OF LAW

First Published in the Wichita Eagle on May 18, 2012

**RESOLUTION NO. 12-116**

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING THE IMPROVEMENT OF **WATER DISTRIBUTION SYSTEM NUMBER 448-90558 (SOUTH OF 47TH ST. SOUTH, WEST OF HYDRAULIC)** IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF IMPROVING **WATER DISTRIBUTION SYSTEM NUMBER 448-90558 (SOUTH OF 47TH ST. SOUTH, WEST OF HYDRAULIC)** IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That it is necessary and in the public interest to improve **Water Distribution System Number 448-90558 (south of 47th St. North, west of Hydraulic)**.

SECTION 2. That the cost of said improvements provided for in Section 1 hereof is estimated to be **Seventy-Five Thousand Dollars (\$75,000)** exclusive of the cost of interest on borrowed money, with **100** percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after **June 1, 2012**, exclusive of the costs of temporary financing.

That, in accordance with the provisions of K.S.A. 12-6a19, a benefit fee be assessed against the improvement district with respect to the improvement district's share of the cost of the existing water main benefit fee, such benefit fee to be in the amount of Fifty-Seven Thousand Eighty-One Dollars (\$57,081).

SECTION 3. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

**UNPLATTED TRACT "A"**

A Tract of land in the North Half of Section 21, Township 28 South, Range 1 East of the Sixth Principal Meridian, Sedgwick County, Kansas described as follows:

Commencing at the Northwest Corner of the Northwest Quarter of Section 21, Township 28 South, Range 1 East of the Sixth Principal Meridian, Sedgwick County, Kansas, thence along an assumed

bearing of N89° 31' 13"E on the North line of said Northwest Quarter for 2295.74 feet to a point, thence S0° 28' 47"E for 155.50 feet to the point of beginning on the Kansas Department of Transportation right-of-way line as described in the Quit Claim Deed recorded as DOC.#/FLM-PG: 29162038, thence S19°28'47"E a distance of 393.37 feet to a point on the Kansas Department of Transportation right-of-way line as described in the Deed recorded in Deed Book 1351 at page 253, thence S 6°26'53"E a distance of 129.68 feet, thence S19°28'47"E a distance of 1465.35 feet to a point on the right-of-way line of the Kansas Turnpike Authority as described in condemnation case A-55279, thence along said Kansas Turnpike Authority right-of-way line S8°42'58"W a distance of 579.10 feet to a point on the South line of the Northeast Quarter of Section 21, Township 28 South, Range 1 East, thence S88°50'51"W along the South line of said Northeast Quarter a distance of 176.00 feet to the Southwest corner of said Northeast Quarter, thence S88°50'53"W along the South line of the Northwest Quarter of Section 21, Township 28 South, Range 1 East a distance of 792.71 feet to a point on the East line of the Riverside Drainage District easement as recorded in Deed Book 432 at page 162, thence N2°01'29"E along said Riverside Drainage District easement a distance of 263.56 feet to a point of curvature, thence continuing along the Riverside Drainage District easement along a curve to the left, having a radius of 2084.33 feet a delta angle of 10°01'53", for an arc distance of 364.93 feet to a point of tangency, thence continuing along said Riverside Drainage District easement N8°00'24"W a distance of 699.38 feet to a point, thence continuing along said Riverside Drainage District easement N6°12'07"W a distance of 1154.42 feet to a point on the Kansas Department of Transportation right-of-way line as described in the Quit Claim Deed recorded as DOC.#/FLM-PG: 29162038, thence along said Kansas Department of Transportation right-of-way line bearing N89°31'13"E a distance of 653.73 feet to the point of beginning.

Said tract contains 50.389 acres, more or less

SECTION 4. That the method of apportioning all costs of said improvements attributable to the improvement district to the owners of land liable for assessment therefore shall be on a **fractional** basis.

That the method of assessment of all costs of the improvement for which the improvement district shall be liable shall be on a fractional basis: UNPLATTED TRACT "A" shall pay 1,000/1,000 of the total cost of the improvements.

Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis. Except when driveways are requested to serve a particular tract, lot, or parcel, the cost of said driveway shall be in addition to the assessment to said tract, lot, or parcel and shall be in addition to the assessment for other improvements.

SECTION 5. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 6. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 7. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of

record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq., as amended.

SECTION 8. Be it further resolved that the above described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 9. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 15<sup>th</sup> day of May, 2012.

\_\_\_\_\_  
CARL BREWER, MAYOR

ATTEST:

\_\_\_\_\_  
KAREN SUBLETT, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

\_\_\_\_\_  
GARY E. REBENSTORF,  
DIRECTOR OF LAW

First Published in the Wichita Eagle on May 18, 2012

**RESOLUTION NO. 12-117**

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING **STORM WATER DRAIN NO. 385 (SOUTH OF 47TH ST. SOUTH, WEST OF HYDRAULIC) 468-84826** IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF **STORM WATER DRAIN NO. 385 (SOUTH OF 47TH ST. SOUTH, WEST OF HYDRAULIC) 468-84826** IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That it is necessary and in the public interest to improve **Storm Water Drain No. 385 (south of 47th St. South, west of Hydraulic) 468-84826**.

SECTION 2. That the cost of said improvements provided for in Section 1 hereof is estimated to be **One Million One Hundred Sixty-Five Thousand Dollars (\$1,165,000)** exclusive of the cost of interest on borrowed money, with **100** percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after **June 1, 2012**, exclusive of the costs of temporary financing.

SECTION 3. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

**UNPLATTED TRACT "A"**

A Tract of land in the North Half of Section 21, Township 28 South, Range 1 East of the Sixth Principal Meridian, Sedgwick County, Kansas described as follows:

Commencing at the Northwest Corner of the Northwest Quarter of Section 21, Township 28 South, Range 1 East of the Sixth Principal Meridian, Sedgwick County, Kansas, thence along an assumed bearing of N89° 31' 13"E on the North line of said Northwest Quarter for 2295.74 feet to a point, thence S0° 28' 47"E for 155.50 feet to the point of beginning on the Kansas Department of Transportation right-of-way line as described in the Quit Claim Deed recorded as DOC.#/FLM-PG: 29162038, thence S19°28'47"E a distance of 393.37 feet to a point on the Kansas Department of Transportation right-of-way line as described in the Deed recorded in Deed Book 1351 at page 253, thence S 6°26'53"E a distance of 129.68 feet, thence S19°28'47"E a distance of 1465.35 feet to a point on the right-of-way line of the Kansas Turnpike Authority as described in condemnation case A-55279,

thence along said Kansas Turnpike Authority right-of-way line S8°42'58"W a distance of 579.10 feet to a point on the South line of the Northeast Quarter of Section 21, Township 28 South, Range 1 East, thence S88°50'51"W along the South line of said Northeast Quarter a distance of 176.00 feet to the Southwest corner of said Northeast Quarter, thence S88°50'53"W along the South line of the Northwest Quarter of Section 21, Township 28 South, Range 1 East a distance of 792.71 feet to a point on the East line of the Riverside Drainage District easement as recorded in Deed Book 432 at page 162, thence N2°01'29"E along said Riverside Drainage District easement a distance of 263.56 feet to a point of curvature, thence continuing along the Riverside Drainage District easement along a curve to the left, having a radius of 2084.33 feet a delta angle of 10°01'53", for an arc distance of 364.93 feet to a point of tangency, thence continuing along said Riverside Drainage District easement N8°00'24"W a distance of 699.38 feet to a point, thence continuing along said Riverside Drainage District easement N6°12'07"W a distance of 1154.42 feet to a point on the Kansas Department of Transportation right-of-way line as described in the Quit Claim Deed recorded as DOC.#/FLM-PG: 29162038, thence along said Kansas Department of Transportation right-of-way line bearing N89°31'13"E a distance of 653.73 feet to the point of beginning.

SECTION 4. That the method of apportioning all costs of said improvements attributable to the improvement district to the owners of land liable for assessment therefore shall be on a **fractional** basis:

That the method of assessment of all costs of the improvement for which the improvement district shall be liable shall be on a fractional basis:  
UNPLATTED TRACT "A" shall pay 1,000/1,000 of the total cost of the improvements.

Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis.

SECTION 5. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 6. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 7. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq. as amended.

SECTION 8. Be it further resolved that the above-described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 9. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 15th day of May, 2012.

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CARL BREWER, MAYOR

ATTEST:

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KAREN SUBLETT, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

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GARY E. REBENSTORF  
DIRECTOR OF LAW



**Following are easements and dedications for City Council on May 15, 2012**

The following deeds and easements have been recorded:

Dedication from Garden Walk Owners' Association, a Kansas not for profit corporation dated April 3, 2012 for a tract described as Reserve J, Krug South Addition, an addition to Wichita, Sedgwick County, Kansas (OCA 766276) No Cost to City

Utility Easement from Monarch Landing LLC, a Kansas limited liability company dated April 3, 2012 for a tract of land lying in Reserve A, Monarch landing Third Addition, an addition to Wichita, Sedgwick County, Kansas No Cost to City

Easement from WSM Properties dated January 23, 2012 for a tract of land lying in Lots 1, WSM Properties Addition, to Wichita, Sedgwick County, Kansas (OCA 607861) No Cost to City

Sanitary Sewer Easement from Davis-Moore Real Estate, LLC dated March 9, 2012 for a tract of land lying in Lots located in Block 1, Carriage House Plaza Fourth Addition, Sedgwick County, Kansas (OCA 607861) No Cost to City

City of Wichita  
City Council Meeting  
May 15, 2012

**TO:** Mayor and City Council

**SUBJECT:** Community Events – Show ‘Em Your Ride (District IV)

**INITIATED BY:** Division of Arts & Cultural Services

**AGENDA:** Consent

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**Recommendation:** Approve the request for temporary street closures.

**Background:** In accordance with the Community Events procedure the event promoter Travis Fellers, is coordinating with City of Wichita staff, subject to final approval by the City Council.

**Analysis:** The following street closure request has been submitted:

**Show ‘Em Your Ride May 20, 2012 11:00 am – 5:00 pm**

- Douglas Avenue, Walnut Street to Oak Street.

The event promoter will arrange to remove the barricades as necessary to allow emergency vehicle access during the entire designated time period. The barricades will be removed immediately upon completion of the event.

**Financial Consideration:** The event promoter is responsible for all costs associated with special events.

**Goal Impact:** Enhance the Quality of Life for citizens through special events and activities.

**Legal Consideration:** There are no legal considerations.

**Recommendation/Actions:** It is recommended that the City Council approve the request subject to: (1) Hiring off-duty certified law enforcement officers as required; (2) Obtaining barricades to close the streets in accordance with requirements of Police, Fire and Public Works Department; and (3) Securing a Certificate of Liability Insurance on file with the Community Event Coordinator.

City of Wichita  
City Council Meeting  
May 15, 2012

**TO:** Mayor and City Council

**SUBJECT:** Community Events – Operation Armed Forces Celebration 5K Run & Walk  
(Districts IV and VI)

**INITIATED BY:** Division of Arts & Cultural Services

**AGENDA:** Consent

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**Recommendation:** Approve the request for temporary street closures.

**Background:** In accordance with the Community Events procedure the event promoter Byron Crawford, Greater Wichita Area Sports Commission, is coordinating with City of Wichita staff, subject to final approval by the City Council.

**Analysis:** The following street closure request has been submitted:

**Operation Armed Forces Celebration 5K Run & Walk May 28, 2012 9:30 am – 11:00 am**

- Central Avenue, Nims Street to Greenway Boulevard
- Greenway Boulevard, Central Avenue to Second Street
- Second Street, Greenway Boulevard to Waco Avenue
- Waco Avenue, Second Street to Central Avenue
- Central Avenue, Waco Avenue to Nims Street

The event promoter will arrange to remove the barricades as necessary to allow emergency vehicle access during the entire designated time period. The barricades will be removed immediately upon completion of the event.

**Financial Consideration:** The event promoter is responsible for all costs associated with special events.

**Goal Impact:** Enhance the Quality of Life for citizens through special events and activities.

**Legal Consideration:** There are no legal considerations.

**Recommendation/Actions:** It is recommended that the City Council approve the request subject to: (1) Hiring off-duty certified law enforcement officers as required; (2) Obtaining barricades to close the streets in accordance with requirements of Police, Fire and Public Works Department; and (3) Securing a Certificate of Liability Insurance on file with the Community Event Coordinator.

City of Wichita  
City Council Meeting  
May 15, 2012

**TO:** Mayor and City Council

**SUBJECT:** Agreement for Golf Course Pro Shop Sales Services (Districts I, III, IV, V, & VI)

**INITIATED BY:** Department of Park and Recreation

**AGENDA:** Consent

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**Recommendation:** Approve the contracts.

**Background:** The City currently operates five municipal golf courses. City staff performs all the maintenance functions at these courses. The Department of Park and Recreation manages clubhouse activities within and retains City-employed PGA Certified golf professionals at the five golf courses. These agreements are with the golf professionals as lessees for pro shop sales services separate from their employment.

**Analysis:** The intent of the Department of Park and Recreation is to have the lessees responsible for stocking all golf-related sale items at these facilities. This removes all City liability for golf apparel and equipment and eliminates the need for inventory expenditure costs. Lessees will lease floor space at the clubhouses for 5% of their gross sales including lessons. The proposed agreement includes a 12-month term.

**Financial Considerations:** Based on past performance these agreements will provide estimated additional revenue to the City of \$11,000 annually.

**Goal Impact:** This action will directly impact the Quality of Life goal by providing excellent customer service and satisfying citizens by offering the pro shop sales services they expect at City golf courses. These agreements allow the City to provide full service pro shops without financial risks.

**Legal Considerations:** The Law Department has reviewed and approved these contracts as to form.

**Recommendation/Action:** It is recommended that the City Council 1) approve the contracts and 2) authorize all necessary signatures.

**Attachments:** Contracts

AGREEMENT  
FOR  
GOLF COURSE PRO SHOP SALES SERVICES  
AT  
**AUBURN HILLS GOLF COURSE**

THIS AGREEMENT made and entered into January 1, 2012, between the City of Wichita, Kansas (hereinafter referred to as "City") and Troy Hendricks (hereinafter referred to as Lessee) pertaining to the AUBURN HILLS GOLF COURSE PRO SHOP, 443 S. 135<sup>th</sup> Street West, Wichita, Kansas (hereinafter referred to as "Pro Shop").

WITNESSETH:

WHEREAS, The City of Wichita is authorized to contract for services to provide golf equipment sales and golf related services; and

WHEREAS, Lessee has demonstrated ability in furnishing golf course pro shop sales service to golf course patrons which would be of value to the City; and

WHEREAS, it would be of mutual benefit to the parties that certain rights, privileges, and covenants be granted by the City to the Lessee in exchange for the consideration to be paid and services to be rendered by the Lessee for said rights, privileges, and covenants as are hereinafter set forth;

NOW, THEREFORE, in consideration of the rights and obligations established in this Agreement, the City grants to Lessee the exclusive privilege of operating the pro shop sales business at the Golf Course and Lessee agrees to provide golf course pro shop sales services to customers of the Pro Shop, all in accordance with the terms of this Agreement:

1. Term. The term of this Agreement shall be from January 1, 2012 to December 31, 2012.
2. Pro Shop Operator. Lessee is designated as the Pro Shop Operator. Golf Course Pro Shop sales services shall include, but not be limited to, merchandising a complete inventory of golf equipment, golf equipment repair, club fitting, teaching and training and all other services ordinarily rendered

and provided by the Pro Shop at a well-conducted golf course. Lessee shall bear the economic risks of conducting the business of the Pro Shop, including all costs of inventory.

3. Leased Premises. The City shall lease to, and Lessee shall have use of that portion of the Clubhouse designated as the pro shop, club repair shop, and club storage room. Lessee agrees that the Leased Premises shall be used only for the functions and activities for which they were designated as determined by the City. Further, Lessee agrees that the Leased Premises shall not be used for any illegal or ultra hazardous activities. In the event that any portion of the Leased Premises becomes subject to state *ad valorem* property taxation as a result of Lessee's rights or use of the Leased Premises under this Agreement, Lessee shall be obligated to pay all such property taxes.

This Agreement is intended to set forth contractual lease conditions on the use of the City's facilities. It further sets forth guidance and expectations for the performance of services. The provisions of this Agreement are to be interpreted as granting the Lessee the right to exercise independent judgment and the right to use his or her own methods in the provision of services subject only to the requirements of this Agreement on the results and work product sought by the City and to be reflected in the services provided to the public.

4. Hours of Operation. Lessee agrees to open the Pro Shop for business each day in accordance with the schedule of days and hours as established for the clubhouse.
5. Operating Standards and Maintenance. Lessee agrees to maintain the Leased Premises in a clean, sanitary, and aesthetically attractive condition. Lessee agrees to do no remodeling nor install any permanent fixtures or additions to the Leased Premises without first submitting a detailed written request and plan and obtaining written approval from the City.
6. Fees and Charges. Lessee agrees that all transactions involving Pro Shop sales and services, including lessons shall be recorded through the accounting system provided by the City and be deposited in City accounts daily. Lessee shall account for such transactions under the procedures set forth in this Agreement and as may be further directed in writing by the City.

The City shall reimburse to Lessee all fees, charges and income received from the provision of services and sale of goods under this Agreement on a weekly basis. Lessee shall remit to the City, as a lease payment, 5% of all gross sales excluding state sales taxes on a monthly basis. Lessee shall establish all fees and charges for goods and services subject to the right of the City to review such fees and charges for reasonableness.

7. Sale of Merchandise. Lessee is granted the exclusive right to sell golf-related equipment, apparel, and other merchandise at the Golf Course. Lessee shall assume any and all business risks and liability in the sale of such merchandise and shall be entitled to retain all income from such sale, subject only to the lease agreement and reporting requirements of this Agreement. All sales shall be conducted in accordance with all local, state, and Federal laws and regulations.
8. Sales Tax. Lessee agrees to establish a sole proprietorship, corporation, or LLC and establish a tax identification number with the State of Kansas. The Lessee agrees to pay all sales tax associated with all Pro Shop sales and submit to the City on a quarterly basis record of said payment.
9. Audit Provisions. Lessee agrees to keep complete and accurate books and records of all receipts of fees and charges and all income and expenses of all items of merchandise and professional services covered by this Agreement. The City or its authorized representative shall have the right to periodically audit the books and records of the Lessee to verify that fees have been correctly computed and paid and reports of income and expenditure correctly made. If any such audit should disclose that the Lessee has paid 98% or less of the payments due to the City for any year or if the audit discloses that reports of income and expenditures are substantially inaccurate or misleading according to generally accepted accounting standards, procedures, and principles the Lessee agrees to reimburse the City for any reasonable costs. If the Lessee disputes the audit findings of the City, the Lessee may request a review of part or all of the audit by a third party mutually agreeable to the City and the Lessee. If such review determines the audit of the City to be substantially in error, the City shall pay the cost of such review, otherwise the Lessee shall pay for

the cost of such review. In the event that payments are found to be incorrect or reports inaccurate, the Lessee shall provide appropriate true-up payments within 15 days or corrected reports within 30 days of the deficiency.

10. Federal and State Income, Self-Employment and Payroll Taxes. Lessee shall be responsible for all federal and state taxes, including all payroll taxes, F.I.C.A., F.U.T.A., self-employment tax, estimated tax payments and/or withholding due to the federal or any state government in relation to income derived by Lessee under this Agreement and any compensation provided by Lessee to its employees in connection with the performance of this Agreement.
11. Contract Evaluation. The parties hereto agree that once each year, or more often if deemed necessary in the opinion of City, City or its designated representative shall complete a performance review concerning the performance of Lessee under this Agreement.
12. Insurance. Lessee shall, at his/her own expense, procure and at all times during the terms of this Agreement and extensions thereof maintain insurance with one or more companies permitted to do business in the State of Kansas, as follows:
  - (a) Comprehensive general liability insurance including death, bodily injury, and property damage coverage with respect to any suit or claim of any kind or nature arising out of the use of the Pro Shop or the consumption or use of any goods sold or rented under the provisions of this Agreement, which shall name the City of Wichita as an additional insured and shall have limits of not less than \$500,000 per occurrence, or such other amount as is established by the Kansas Legislature as the maximum amount for which a municipality can be held liable under the Kansas Tort Claims Act. Such insurance shall include (a) broad form contractual liability insurance and (b) products and completed operations liability insurance.
  - (b) Lessee shall keep the contents of the Leased Premises and personal property of the Lessee insured at all times against loss or damage by theft, fire, lightning and other risks



covered by broadest form extended coverage insurance endorsement then in use in the State of Kansas in an amount to cover the loss.

- (c) Lessee and City waive all rights against each other for damage caused by fire or other perils to the extent covered by insurance obtained pursuant to this subparagraph or any other property insurance purchased by either party.
- (d) All policies and certificates of renewal covering the aforesaid insurance shall be subject to the approval of the City. Copies of all such insurance policies shall be filed with the City and shall be endorsed to require the insurer to furnish the City thirty (30) days' prior written notice of any cancellation of or material changes in such policies.

Lessee may at his/her own expense, carry such other insurance in his/her own name, as he/she may deem desirable. Lessee must report to the City in writing, using a report form furnished by the City, all incidents of injury or property damage occurring as a result of pro shop sales and service activity.

13. Indemnity and Hold Harmless. Lessee shall protect, indemnify, and save harmless the City from and against any and all losses, damages, and claims, for personal injury, property damage, or otherwise which may be incurred by the City or asserted against it, arising out of the use and occupancy of the Pro Shop by Lessee, his/her sub/lessees, employees or permittees, or the consumption or use of any goods sold or rented under the provisions of this Agreement, or in any manner arising out of a breach or default in the performance of the Agreement by Lessee whether such losses, damages, or claims shall occur on or outside of the Leased Premises, except to the extent caused by the negligence of the City.

Further, Lessee shall protect and indemnify the City against, and shall reimburse the City for, all liabilities incurred by the City as a result, in whole or in part, of Lessee's failure to perform its obligations with respect to insurance or payment of taxes, as well as any tax liabilities (including related interest and penalties) that may be incurred by the City if Lessee is required to be reclassified as an "employee" of the City in the performance of Lessee's services under this

Agreement, for federal or state tax purposes. Lessee also agrees to execute appropriate forms to allow tax auditors to disclose to the City, pursuant to 26 U.S.C. section 6103(c) or (e), the Lessee's tax reporting of income earned under this agreement for any period in which a classification issue is raised in a tax audit of the City's payroll tax matters.

The Lessee shall investigate and submit to the City a written report on any claims for damages that may be reported to the Lessee by individuals or the City.

14. Default and Termination. The parties agree that this Agreement may be terminated at any time upon their mutual agreement.

In the event of Lessee's failure to comply with any of the terms, covenants, or conditions of this Agreement, other than as hereinafter provided for failure of payment and for accounting of funds lawfully due the City, City may cancel this contract upon sixty (60) days' written notice by certified mail in the event of default by Lessee continuing for more than fifteen (15) days after written notice by certified mail of the existence of such event of default.

In the event Lessee fails to make a proper accounting of or fails to make any payment of funds to City as lawfully required, City may at its option cancel this Agreement upon five (5) days' written notice to Professional. Lessee shall have the right to cure such default within the five days unless the default involves a crime, dishonesty, or intentional misconduct by Lessee or by Lessee's agents, which should have been within the reasonable knowledge of Lessee. Provided, however, if the Lessee disputes the City's determination as to the amount of an accounting or payment, the Lessee may make such accounting or payment to the City under protest. In the event that it is determined that the City was in error, the City shall return any such funds erroneously collected together with interest at the rate earned on City general fund deposits.

In the event of bankruptcy (voluntary or involuntary), assignment by Lessee for the benefit of creditors, or receivership of Lessee's assets, this Agreement shall automatically and immediately be terminated except as to Lessee's liability for sums then due City.

Additionally, the right is reserved to either party to terminate this agreement at any time, at will and for any reason, upon one hundred and twenty (120) days' written notice to the other.

15. Assignment. This Agreement is for services personal to the Lessee and shall not be assigned nor sold nor will the premises be sublet in whole or in part without the written approval of the City.
16. Notice. All notices provided for in this Agreement shall be in writing and mailed by registered or certified mail or by express carrier such as Federal Express, postage prepaid, to the following addresses until such time as written notice of a change in address is given the other party:

City:

Mr. Don Harrison  
Golf Course Manager  
City Hall 455 N. Main  
Wichita, KS 67202

Lessee:

Mr. Troy Hendricks  
Auburn Hills Golf Course  
443 S. 135<sup>th</sup> Street West  
Wichita, KS 67235

17. Nondiscrimination. Lessee will not permit discrimination against any person in the use of occupancy of the Leased Premises on the grounds of race, color, sex, religion, national origin, ancestry, physical handicap, or age, except where age is a bona fide occupational qualification, and in addition, Lessee shall comply with City's Affirmative Action Program as set forth in Exhibit "A" attached hereto.
18. Kansas Law to Govern. This Agreement is entered into under the laws of the State of Kansas.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.

CITY OF WICHITA, KANSAS

By \_\_\_\_\_  
Carl Brewer, Mayor

ATTEST:

\_\_\_\_\_  
Karen Sublett, City Clerk

Approved as to Form:

\_\_\_\_\_  
Gary E. Rebenstorf,  
Director of Law and City Attorney

By \_\_\_\_\_  
Troy Hendricks, "Lessee"

AGREEMENT  
FOR  
GOLF COURSE PRO SHOP SALES SERVICES  
AT  
L. W. CLAPP GOLF COURSE

THIS AGREEMENT made and entered into April 28, 2012, between the City of Wichita, Kansas (hereinafter referred to as "City") and Thomas Monahan (hereinafter referred to as Lessee) pertaining to the L. W. CLAPP GOLF COURSE PRO SHOP, 4611 E. Harry Street, Wichita, Kansas (hereinafter referred to as "Pro Shop").

WITNESSETH:

WHEREAS, The City of Wichita is authorized to contract for services to provide golf equipment sales and golf related services; and

WHEREAS, Lessee has demonstrated ability in furnishing golf course pro shop sales service to golf course patrons which would be of value to the City; and

WHEREAS, it would be of mutual benefit to the parties that certain rights, privileges, and covenants be granted by the City to the Lessee in exchange for the consideration to be paid and services to be rendered by the Lessee for said rights, privileges, and covenants as are hereinafter set forth;

NOW, THEREFORE, in consideration of the rights and obligations established in this Agreement, the City grants to Lessee the exclusive privilege of operating the pro shop sales business at the Golf Course and Lessee agrees to provide golf course pro shop sales services to customers of the Pro Shop, all in accordance with the terms of this Agreement:

1. Term. The term of this Agreement shall be from April 28, 2012 to December 31, 2012.
2. Pro Shop Operator. Lessee is designated as the Pro Shop Operator. Golf Course Pro Shop sales services shall include, but not be limited to, merchandising a complete inventory of golf equipment, golf equipment repair, club fitting, teaching and training and all other services ordinarily rendered

and provided by the Pro Shop at a well-conducted golf course. Lessee shall bear the economic risks of conducting the business of the Pro Shop, including all costs of inventory.

3. Leased Premises. The City shall lease to, and Lessee shall have use of that portion of the Clubhouse designated as the pro shop, club repair shop, and club storage room. Lessee agrees that the Leased Premises shall be used only for the functions and activities for which they were designated as determined by the City. Further, Lessee agrees that the Leased Premises shall not be used for any illegal or ultra hazardous activities. In the event that any portion of the Leased Premises becomes subject to state *ad valorem* property taxation as a result of Lessee's rights or use of the Leased Premises under this Agreement, Lessee shall be obligated to pay all such property taxes.

This Agreement is intended to set forth contractual lease conditions on the use of the City's facilities. It further sets forth guidance and expectations for the performance of services. The provisions of this Agreement are to be interpreted as granting the Lessee the right to exercise independent judgment and the right to use his or her own methods in the provision of services subject only to the requirements of this Agreement on the results and work product sought by the City and to be reflected in the services provided to the public.

4. Hours of Operation. Lessee agrees to open the Pro Shop for business each day in accordance with the schedule of days and hours as established for the clubhouse.
5. Operating Standards and Maintenance. Lessee agrees to maintain the Leased Premises in a clean, sanitary, and aesthetically attractive condition. Lessee agrees to do no remodeling nor install any permanent fixtures or additions to the Leased Premises without first submitting a detailed written request and plan and obtaining written approval from the City.
6. Fees and Charges. Lessee agrees that all transactions involving Pro Shop sales and services, including lessons shall be recorded through the accounting system provided by the City and be deposited in City accounts daily. Lessee shall account for such transactions under the procedures set forth in this Agreement and as may be further directed in writing by the City.

The City shall reimburse to Lessee all fees, charges and income received from the provision of services and sale of goods under this Agreement on a weekly basis. Lessee shall remit to the City, as a lease payment, 5% of all gross sales excluding state sales taxes on a monthly basis. Lessee shall establish all fees and charges for goods and services subject to the right of the City to review such fees and charges for reasonableness.

7. Sale of Merchandise. Lessee is granted the exclusive right to sell golf-related equipment, apparel, and other merchandise at the Golf Course. Lessee shall assume any and all business risks and liability in the sale of such merchandise and shall be entitled to retain all income from such sale, subject only to the lease agreement and reporting requirements of this Agreement. All sales shall be conducted in accordance with all local, state, and Federal laws and regulations.
8. Sales Tax. Lessee agrees to establish a sole proprietorship, corporation, or LLC and establish a tax identification number with the State of Kansas. The Lessee agrees to pay all sales tax associated with all Pro Shop sales and submit to the City on a quarterly basis record of said payment.
9. Audit Provisions. Lessee agrees to keep complete and accurate books and records of all receipts of fees and charges and all income and expenses of all items of merchandise and professional services covered by this Agreement. The City or its authorized representative shall have the right to periodically audit the books and records of the Lessee to verify that fees have been correctly computed and paid and reports of income and expenditure correctly made. If any such audit should disclose that the Lessee has paid 98% or less of the payments due to the City for any year or if the audit discloses that reports of income and expenditures are substantially inaccurate or misleading according to generally accepted accounting standards, procedures, and principles the Lessee agrees to reimburse the City for any reasonable costs. If the Lessee disputes the audit findings of the City, the Lessee may request a review of part or all of the audit by a third party mutually agreeable to the City and the Lessee. If such review determines the audit of the City to be substantially in error, the City shall pay the cost of such review, otherwise the Lessee shall pay for

the cost of such review. In the event that payments are found to be incorrect or reports inaccurate, the Lessee shall provide appropriate true-up payments within 15 days or corrected reports within 30 days of the deficiency.

10. Federal and State Income, Self-Employment and Payroll Taxes. Lessee shall be responsible for all federal and state taxes, including all payroll taxes, F.I.C.A., F.U.T.A., self-employment tax, estimated tax payments and/or withholding due to the federal or any state government in relation to income derived by Lessee under this Agreement and any compensation provided by Lessee to its employees in connection with the performance of this Agreement.
11. Contract Evaluation. The parties hereto agree that once each year, or more often if deemed necessary in the opinion of City, City or its designated representative shall complete a performance review concerning the performance of Lessee under this Agreement.
12. Insurance. Lessee shall, at his/her own expense, procure and at all times during the terms of this Agreement and extensions thereof maintain insurance with one or more companies permitted to do business in the State of Kansas, as follows:
  - (a) Comprehensive general liability insurance including death, bodily injury, and property damage coverage with respect to any suit or claim of any kind or nature arising out of the use of the Pro Shop or the consumption or use of any goods sold or rented under the provisions of this Agreement, which shall name the City of Wichita as an additional insured and shall have limits of not less than \$500,000 per occurrence, or such other amount as is established by the Kansas Legislature as the maximum amount for which a municipality can be held liable under the Kansas Tort Claims Act. Such insurance shall include (a) broad form contractual liability insurance and (b) products and completed operations liability insurance.
  - (b) Lessee shall keep the contents of the Leased Premises and personal property of the Lessee insured at all times against loss or damage by theft, fire, lightning and other risks



covered by broadest form extended coverage insurance endorsement then in use in the State of Kansas in an amount to cover the loss.

- (c) Lessee and City waive all rights against each other for damage caused by fire or other perils to the extent covered by insurance obtained pursuant to this subparagraph or any other property insurance purchased by either party.
- (d) All policies and certificates of renewal covering the aforesaid insurance shall be subject to the approval of the City. Copies of all such insurance policies shall be filed with the City and shall be endorsed to require the insurer to furnish the City thirty (30) days' prior written notice of any cancellation of or material changes in such policies.

Lessee may at his/her own expense, carry such other insurance in his/her own name, as he/she may deem desirable. Lessee must report to the City in writing, using a report form furnished by the City, all incidents of injury or property damage occurring as a result of pro shop sales and service activity.

13. Indemnity and Hold Harmless. Lessee shall protect, indemnify, and save harmless the City from and against any and all losses, damages, and claims, for personal injury, property damage, or otherwise which may be incurred by the City or asserted against it, arising out of the use and occupancy of the Pro Shop by Lessee, his/her sub/lessees, employees or permittees, or the consumption or use of any goods sold or rented under the provisions of this Agreement, or in any manner arising out of a breach or default in the performance of the Agreement by Lessee whether such losses, damages, or claims shall occur on or outside of the Leased Premises, except to the extent caused by the negligence of the City.

Further, Lessee shall protect and indemnify the City against, and shall reimburse the City for, all liabilities incurred by the City as a result, in whole or in part, of Lessee's failure to perform its obligations with respect to insurance or payment of taxes, as well as any tax liabilities (including related interest and penalties) that may be incurred by the City if Lessee is required to be reclassified as an "employee" of the City in the performance of Lessee's services under this

Agreement, for federal or state tax purposes. Lessee also agrees to execute appropriate forms to allow tax auditors to disclose to the City, pursuant to 26 U.S.C. section 6103(c) or (e), the Lessee's tax reporting of income earned under this agreement for any period in which a classification issue is raised in a tax audit of the City's payroll tax matters.

The Lessee shall investigate and submit to the City a written report on any claims for damages that may be reported to the Lessee by individuals or the City.

14. Default and Termination. The parties agree that this Agreement may be terminated at any time upon their mutual agreement.

In the event of Lessee's failure to comply with any of the terms, covenants, or conditions of this Agreement, other than as hereinafter provided for failure of payment and for accounting of funds lawfully due the City, City may cancel this contract upon sixty (60) days' written notice by certified mail in the event of default by Lessee continuing for more than fifteen (15) days after written notice by certified mail of the existence of such event of default.

In the event Lessee fails to make a proper accounting of or fails to make any payment of funds to City as lawfully required, City may at its option cancel this Agreement upon five (5) days' written notice to Professional. Lessee shall have the right to cure such default within the five days unless the default involves a crime, dishonesty, or intentional misconduct by Lessee or by Lessee's agents, which should have been within the reasonable knowledge of Lessee. Provided, however, if the Lessee disputes the City's determination as to the amount of an accounting or payment, the Lessee may make such accounting or payment to the City under protest. In the event that it is determined that the City was in error, the City shall return any such funds erroneously collected together with interest at the rate earned on City general fund deposits.

In the event of bankruptcy (voluntary or involuntary), assignment by Lessee for the benefit of creditors, or receivership of Lessee's assets, this Agreement shall automatically and immediately be terminated except as to Lessee's liability for sums then due City.

Additionally, the right is reserved to either party to terminate this agreement at any time, at will and for any reason, upon one hundred and twenty (120) days' written notice to the other.

15. Assignment. This Agreement is for services personal to the Lessee and shall not be assigned nor sold nor will the premises be sublet in whole or in part without the written approval of the City.
16. Notice. All notices provided for in this Agreement shall be in writing and mailed by registered or certified mail or by express carrier such as Federal Express, postage prepaid, to the following addresses until such time as written notice of a change in address is given the other party:

City:

Mr. Don Harrison  
Golf Course Manager  
City Hall 455 N. Main  
Wichita, KS 67202

Lessee:

Mr. Thomas Monahan  
L.W. Clapp Golf Course  
4611 E. Harry Street  
Wichita, KS 67218

17. Nondiscrimination. Lessee will not permit discrimination against any person in the use of occupancy of the Leased Premises on the grounds of race, color, sex, religion, national origin, ancestry, physical handicap, or age, except where age is a bona fide occupational qualification, and in addition, Lessee shall comply with City's Affirmative Action Program as set forth in Exhibit "A" attached hereto.
18. Kansas Law to Govern. This Agreement is entered into under the laws of the State of Kansas.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.

CITY OF WICHITA, KANSAS

By \_\_\_\_\_  
Carl Brewer, Mayor

ATTEST:

\_\_\_\_\_  
Karen Sublett, City Clerk

Approved as to Form:

\_\_\_\_\_  
Gary E. Rebenstorf,  
Director of Law and City Attorney

By \_\_\_\_\_  
Thomas Monahan, "Lessee"

AGREEMENT  
FOR  
GOLF COURSE PRO SHOP SALES SERVICES  
AT  
L. W. CLAPP GOLF COURSE

THIS AGREEMENT made and entered into January 1, 2012, between the City of Wichita, Kansas (hereinafter referred to as "City") and Richard Orr (hereinafter referred to as Lessee) pertaining to the L. W. CLAPP GOLF COURSE PRO SHOP, 4611 E. Harry Street, Wichita, Kansas (hereinafter referred to as "Pro Shop").

WITNESSETH:

WHEREAS, The City of Wichita is authorized to contract for services to provide golf equipment sales and golf related services; and

WHEREAS, Lessee has demonstrated ability in furnishing golf course pro shop sales service to golf course patrons which would be of value to the City; and

WHEREAS, it would be of mutual benefit to the parties that certain rights, privileges, and covenants be granted by the City to the Lessee in exchange for the consideration to be paid and services to be rendered by the Lessee for said rights, privileges, and covenants as are hereinafter set forth;

NOW, THEREFORE, in consideration of the rights and obligations established in this Agreement, the City grants to Lessee the exclusive privilege of operating the pro shop sales business at the Golf Course and Lessee agrees to provide golf course pro shop sales services to customers of the Pro Shop, all in accordance with the terms of this Agreement:

1. Term. The term of this Agreement shall be from January 1, 2012 to April 27, 2012.
2. Pro Shop Operator. Lessee is designated as the Pro Shop Operator. Golf Course Pro Shop sales services shall include, but not be limited to, merchandising a complete inventory of golf equipment, golf equipment repair, club fitting, teaching and training and all other services ordinarily rendered

and provided by the Pro Shop at a well-conducted golf course. Lessee shall bear the economic risks of conducting the business of the Pro Shop, including all costs of inventory.

3. Leased Premises. The City shall lease to, and Lessee shall have use of that portion of the Clubhouse designated as the pro shop, club repair shop, and club storage room. Lessee agrees that the Leased Premises shall be used only for the functions and activities for which they were designated as determined by the City. Further, Lessee agrees that the Leased Premises shall not be used for any illegal or ultra hazardous activities. In the event that any portion of the Leased Premises becomes subject to state *ad valorem* property taxation as a result of Lessee's rights or use of the Leased Premises under this Agreement, Lessee shall be obligated to pay all such property taxes.

This Agreement is intended to set forth contractual lease conditions on the use of the City's facilities. It further sets forth guidance and expectations for the performance of services. The provisions of this Agreement are to be interpreted as granting the Lessee the right to exercise independent judgment and the right to use his or her own methods in the provision of services subject only to the requirements of this Agreement on the results and work product sought by the City and to be reflected in the services provided to the public.

4. Hours of Operation. Lessee agrees to open the Pro Shop for business each day in accordance with the schedule of days and hours as established for the clubhouse.
5. Operating Standards and Maintenance. Lessee agrees to maintain the Leased Premises in a clean, sanitary, and aesthetically attractive condition. Lessee agrees to do no remodeling nor install any permanent fixtures or additions to the Leased Premises without first submitting a detailed written request and plan and obtaining written approval from the City.
6. Fees and Charges. Lessee agrees that all transactions involving Pro Shop sales and services, including lessons shall be recorded through the accounting system provided by the City and be deposited in City accounts daily. Lessee shall account for such transactions under the procedures set forth in this Agreement and as may be further directed in writing by the City.

The City shall reimburse to Lessee all fees, charges and income received from the provision of services and sale of goods under this Agreement on a weekly basis. Lessee shall remit to the City, as a lease payment, 5% of all gross sales excluding state sales taxes on a monthly basis. Lessee shall establish all fees and charges for goods and services subject to the right of the City to review such fees and charges for reasonableness.

7. Sale of Merchandise. Lessee is granted the exclusive right to sell golf-related equipment, apparel, and other merchandise at the Golf Course. Lessee shall assume any and all business risks and liability in the sale of such merchandise and shall be entitled to retain all income from such sale, subject only to the lease agreement and reporting requirements of this Agreement. All sales shall be conducted in accordance with all local, state, and Federal laws and regulations.
8. Sales Tax. Lessee agrees to establish a sole proprietorship, corporation, or LLC and establish a tax identification number with the State of Kansas. The Lessee agrees to pay all sales tax associated with all Pro Shop sales and submit to the City on a quarterly basis record of said payment.
9. Audit Provisions. Lessee agrees to keep complete and accurate books and records of all receipts of fees and charges and all income and expenses of all items of merchandise and professional services covered by this Agreement. The City or its authorized representative shall have the right to periodically audit the books and records of the Lessee to verify that fees have been correctly computed and paid and reports of income and expenditure correctly made. If any such audit should disclose that the Lessee has paid 98% or less of the payments due to the City for any year or if the audit discloses that reports of income and expenditures are substantially inaccurate or misleading according to generally accepted accounting standards, procedures, and principles the Lessee agrees to reimburse the City for any reasonable costs. If the Lessee disputes the audit findings of the City, the Lessee may request a review of part or all of the audit by a third party mutually agreeable to the City and the Lessee. If such review determines the audit of the City to be substantially in error, the City shall pay the cost of such review, otherwise the Lessee shall pay for

the cost of such review. In the event that payments are found to be incorrect or reports inaccurate, the Lessee shall provide appropriate true-up payments within 15 days or corrected reports within 30 days of the deficiency.

10. Federal and State Income, Self-Employment and Payroll Taxes. Lessee shall be responsible for all federal and state taxes, including all payroll taxes, F.I.C.A., F.U.T.A., self-employment tax, estimated tax payments and/or withholding due to the federal or any state government in relation to income derived by Lessee under this Agreement and any compensation provided by Lessee to its employees in connection with the performance of this Agreement.
11. Contract Evaluation. The parties hereto agree that once each year, or more often if deemed necessary in the opinion of City, City or its designated representative shall complete a performance review concerning the performance of Lessee under this Agreement.
12. Insurance. Lessee shall, at his/her own expense, procure and at all times during the terms of this Agreement and extensions thereof maintain insurance with one or more companies permitted to do business in the State of Kansas, as follows:
  - (a) Comprehensive general liability insurance including death, bodily injury, and property damage coverage with respect to any suit or claim of any kind or nature arising out of the use of the Pro Shop or the consumption or use of any goods sold or rented under the provisions of this Agreement, which shall name the City of Wichita as an additional insured and shall have limits of not less than \$500,000 per occurrence, or such other amount as is established by the Kansas Legislature as the maximum amount for which a municipality can be held liable under the Kansas Tort Claims Act. Such insurance shall include (a) broad form contractual liability insurance and (b) products and completed operations liability insurance.
  - (b) Lessee shall keep the contents of the Leased Premises and personal property of the Lessee insured at all times against loss or damage by theft, fire, lightning and other risks



covered by broadest form extended coverage insurance endorsement then in use in the State of Kansas in an amount to cover the loss.

- (c) Lessee and City waive all rights against each other for damage caused by fire or other perils to the extent covered by insurance obtained pursuant to this subparagraph or any other property insurance purchased by either party.
- (d) All policies and certificates of renewal covering the aforesaid insurance shall be subject to the approval of the City. Copies of all such insurance policies shall be filed with the City and shall be endorsed to require the insurer to furnish the City thirty (30) days' prior written notice of any cancellation of or material changes in such policies.

Lessee may at his/her own expense, carry such other insurance in his/her own name, as he/she may deem desirable. Lessee must report to the City in writing, using a report form furnished by the City, all incidents of injury or property damage occurring as a result of pro shop sales and service activity.

13. Indemnity and Hold Harmless. Lessee shall protect, indemnify, and save harmless the City from and against any and all losses, damages, and claims, for personal injury, property damage, or otherwise which may be incurred by the City or asserted against it, arising out of the use and occupancy of the Pro Shop by Lessee, his/her sub/lessees, employees or permittees, or the consumption or use of any goods sold or rented under the provisions of this Agreement, or in any manner arising out of a breach or default in the performance of the Agreement by Lessee whether such losses, damages, or claims shall occur on or outside of the Leased Premises, except to the extent caused by the negligence of the City.

Further, Lessee shall protect and indemnify the City against, and shall reimburse the City for, all liabilities incurred by the City as a result, in whole or in part, of Lessee's failure to perform its obligations with respect to insurance or payment of taxes, as well as any tax liabilities (including related interest and penalties) that may be incurred by the City if Lessee is required to be reclassified as an "employee" of the City in the performance of Lessee's services under this

Agreement, for federal or state tax purposes. Lessee also agrees to execute appropriate forms to allow tax auditors to disclose to the City, pursuant to 26 U.S.C. section 6103(c) or (e), the Lessee's tax reporting of income earned under this agreement for any period in which a classification issue is raised in a tax audit of the City's payroll tax matters.

The Lessee shall investigate and submit to the City a written report on any claims for damages that may be reported to the Lessee by individuals or the City.

14. Default and Termination. The parties agree that this Agreement may be terminated at any time upon their mutual agreement.

In the event of Lessee's failure to comply with any of the terms, covenants, or conditions of this Agreement, other than as hereinafter provided for failure of payment and for accounting of funds lawfully due the City, City may cancel this contract upon sixty (60) days' written notice by certified mail in the event of default by Lessee continuing for more than fifteen (15) days after written notice by certified mail of the existence of such event of default.

In the event Lessee fails to make a proper accounting of or fails to make any payment of funds to City as lawfully required, City may at its option cancel this Agreement upon five (5) days' written notice to Professional. Lessee shall have the right to cure such default within the five days unless the default involves a crime, dishonesty, or intentional misconduct by Lessee or by Lessee's agents, which should have been within the reasonable knowledge of Lessee. Provided, however, if the Lessee disputes the City's determination as to the amount of an accounting or payment, the Lessee may make such accounting or payment to the City under protest. In the event that it is determined that the City was in error, the City shall return any such funds erroneously collected together with interest at the rate earned on City general fund deposits.

In the event of bankruptcy (voluntary or involuntary), assignment by Lessee for the benefit of creditors, or receivership of Lessee's assets, this Agreement shall automatically and immediately be terminated except as to Lessee's liability for sums then due City.

Additionally, the right is reserved to either party to terminate this agreement at any time, at will and for any reason, upon one hundred and twenty (120) days' written notice to the other.

15. Assignment. This Agreement is for services personal to the Lessee and shall not be assigned nor sold nor will the premises be sublet in whole or in part without the written approval of the City.
16. Notice. All notices provided for in this Agreement shall be in writing and mailed by registered or certified mail or by express carrier such as Federal Express, postage prepaid, to the following addresses until such time as written notice of a change in address is given the other party:

City:

Mr. Don Harrison  
Golf Course Manager  
City Hall 455 N. Main  
Wichita, KS 67202

Lessee:

Mr. Richard Orr  
L.W. Clapp Golf Course  
4611 E. Harry Street  
Wichita, KS 67218

17. Nondiscrimination. Lessee will not permit discrimination against any person in the use of occupancy of the Leased Premises on the grounds of race, color, sex, religion, national origin, ancestry, physical handicap, or age, except where age is a bona fide occupational qualification, and in addition, Lessee shall comply with City's Affirmative Action Program as set forth in Exhibit "A" attached hereto.
18. Kansas Law to Govern. This Agreement is entered into under the laws of the State of Kansas.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.

CITY OF WICHITA, KANSAS

By \_\_\_\_\_  
Carl Brewer, Mayor

ATTEST:

\_\_\_\_\_  
Karen Sublett, City Clerk

Approved as to Form:

\_\_\_\_\_  
Gary E. Rebenstorf,  
Director of Law and City Attorney

By \_\_\_\_\_  
Richard Orr, "Lessee"

AGREEMENT  
FOR  
GOLF COURSE PRO SHOP SALES SERVICES  
AT  
**MacDONALD GOLF COURSE**

THIS AGREEMENT made and entered into January 1, 2012, between the City of Wichita, Kansas (hereinafter referred to as "City") and Steven Blaske (hereinafter referred to as Lessee) pertaining to the MacDONALD GOLF COURSE PRO SHOP, 840 North Yale, Wichita, Kansas (hereinafter referred to as "Pro Shop").

WITNESSETH:

WHEREAS, The City of Wichita is authorized to contract for services to provide golf equipment sales and golf related services; and

WHEREAS, Lessee has demonstrated ability in furnishing golf course pro shop sales service to golf course patrons which would be of value to the City; and

WHEREAS, it would be of mutual benefit to the parties that certain rights, privileges, and covenants be granted by the City to the Lessee in exchange for the consideration to be paid and services to be rendered by the Lessee for said rights, privileges, and covenants as are hereinafter set forth;

NOW, THEREFORE, in consideration of the rights and obligations established in this Agreement, the City grants to Lessee the exclusive privilege of operating the pro shop sales business at the Golf Course and Lessee agrees to provide golf course pro shop sales services to customers of the Pro Shop, all in accordance with the terms of this Agreement:

1. Term. The term of this Agreement shall be from January 1, 2012 to December 31, 2012.
2. Pro Shop Operator. Lessee is designated as the Pro Shop Operator. Golf Course Pro Shop sales services shall include, but not be limited to, merchandising a complete inventory of golf equipment, golf equipment repair, club fitting, teaching and training and all other services ordinarily rendered

and provided by the Pro Shop at a well-conducted golf course. Lessee shall bear the economic risks of conducting the business of the Pro Shop, including all costs of inventory.

3. Leased Premises. The City shall lease to, and Lessee shall have use of that portion of the Clubhouse designated as the pro shop, club repair shop, and club storage room. Lessee agrees that the Leased Premises shall be used only for the functions and activities for which they were designated as determined by the City. Further, Lessee agrees that the Leased Premises shall not be used for any illegal or ultra hazardous activities. In the event that any portion of the Leased Premises becomes subject to state *ad valorem* property taxation as a result of Lessee's rights or use of the Leased Premises under this Agreement, Lessee shall be obligated to pay all such property taxes.

This Agreement is intended to set forth contractual lease conditions on the use of the City's facilities. It further sets forth guidance and expectations for the performance of services. The provisions of this Agreement are to be interpreted as granting the Lessee the right to exercise independent judgment and the right to use his or her own methods in the provision of services subject only to the requirements of this Agreement on the results and work product sought by the City and to be reflected in the services provided to the public.

4. Hours of Operation. Lessee agrees to open the Pro Shop for business each day in accordance with the schedule of days and hours as established for the clubhouse.
5. Operating Standards and Maintenance. Lessee agrees to maintain the Leased Premises in a clean, sanitary, and aesthetically attractive condition. Lessee agrees to do no remodeling nor install any permanent fixtures or additions to the Leased Premises without first submitting a detailed written request and plan and obtaining written approval from the City.
6. Fees and Charges. Lessee agrees that all transactions involving Pro Shop sales and services, including lessons shall be recorded through the accounting system provided by the City and be deposited in City accounts daily. Lessee shall account for such transactions under the procedures set forth in this Agreement and as may be further directed in writing by the City.

The City shall reimburse to Lessee all fees, charges and income received from the provision of services and sale of goods under this Agreement on a weekly basis. Lessee shall remit to the City, as a lease payment, 5% of all gross sales excluding state sales taxes on a monthly basis. Lessee shall establish all fees and charges for goods and services subject to the right of the City to review such fees and charges for reasonableness.

7. Sale of Merchandise. Lessee is granted the exclusive right to sell golf-related equipment, apparel, and other merchandise at the Golf Course. Lessee shall assume any and all business risks and liability in the sale of such merchandise and shall be entitled to retain all income from such sale, subject only to the lease agreement and reporting requirements of this Agreement. All sales shall be conducted in accordance with all local, state, and Federal laws and regulations.
8. Sales Tax. Lessee agrees to establish a sole proprietorship, corporation, or LLC and establish a tax identification number with the State of Kansas. The Lessee agrees to pay all sales tax associated with all Pro Shop sales and submit to the City on a quarterly basis record of said payment.
9. Audit Provisions. Lessee agrees to keep complete and accurate books and records of all receipts of fees and charges and all income and expenses of all items of merchandise and professional services covered by this Agreement. The City or its authorized representative shall have the right to periodically audit the books and records of the Lessee to verify that fees have been correctly computed and paid and reports of income and expenditure correctly made. If any such audit should disclose that the Lessee has paid 98% or less of the payments due to the City for any year or if the audit discloses that reports of income and expenditures are substantially inaccurate or misleading according to generally accepted accounting standards, procedures, and principles the Lessee agrees to reimburse the City for any reasonable costs. If the Lessee disputes the audit findings of the City, the Lessee may request a review of part or all of the audit by a third party mutually agreeable to the City and the Lessee. If such review determines the audit of the City to be substantially in error, the City shall pay the cost of such review, otherwise the Lessee shall pay for

the cost of such review. In the event that payments are found to be incorrect or reports inaccurate, the Lessee shall provide appropriate true-up payments within 15 days or corrected reports within 30 days of the deficiency.

10. Federal and State Income, Self-Employment and Payroll Taxes. Lessee shall be responsible for all federal and state taxes, including all payroll taxes, F.I.C.A., F.U.T.A., self-employment tax, estimated tax payments and/or withholding due to the federal or any state government in relation to income derived by Lessee under this Agreement and any compensation provided by Lessee to its employees in connection with the performance of this Agreement.
11. Contract Evaluation. The parties hereto agree that once each year, or more often if deemed necessary in the opinion of City, City or its designated representative shall complete a performance review concerning the performance of Lessee under this Agreement.
12. Insurance. Lessee shall, at his/her own expense, procure and at all times during the terms of this Agreement and extensions thereof maintain insurance with one or more companies permitted to do business in the State of Kansas, as follows:
  - (a) Comprehensive general liability insurance including death, bodily injury, and property damage coverage with respect to any suit or claim of any kind or nature arising out of the use of the Pro Shop or the consumption or use of any goods sold or rented under the provisions of this Agreement, which shall name the City of Wichita as an additional insured and shall have limits of not less than \$500,000 per occurrence, or such other amount as is established by the Kansas Legislature as the maximum amount for which a municipality can be held liable under the Kansas Tort Claims Act. Such insurance shall include (a) broad form contractual liability insurance and (b) products and completed operations liability insurance.
  - (b) Lessee shall keep the contents of the Leased Premises and personal property of the Lessee insured at all times against loss or damage by theft, fire, lightning and other risks



covered by broadest form extended coverage insurance endorsement then in use in the State of Kansas in an amount to cover the loss.

- (c) Lessee and City waive all rights against each other for damage caused by fire or other perils to the extent covered by insurance obtained pursuant to this subparagraph or any other property insurance purchased by either party.
- (d) All policies and certificates of renewal covering the aforesaid insurance shall be subject to the approval of the City. Copies of all such insurance policies shall be filed with the City and shall be endorsed to require the insurer to furnish the City thirty (30) days' prior written notice of any cancellation of or material changes in such policies.

Lessee may at his/her own expense, carry such other insurance in his/her own name, as he/she may deem desirable. Lessee must report to the City in writing, using a report form furnished by the City, all incidents of injury or property damage occurring as a result of pro shop sales and service activity.

13. Indemnity and Hold Harmless. Lessee shall protect, indemnify, and save harmless the City from and against any and all losses, damages, and claims, for personal injury, property damage, or otherwise which may be incurred by the City or asserted against it, arising out of the use and occupancy of the Pro Shop by Lessee, his/her sub/lessees, employees or permittees, or the consumption or use of any goods sold or rented under the provisions of this Agreement, or in any manner arising out of a breach or default in the performance of the Agreement by Lessee whether such losses, damages, or claims shall occur on or outside of the Leased Premises, except to the extent caused by the negligence of the City.

Further, Lessee shall protect and indemnify the City against, and shall reimburse the City for, all liabilities incurred by the City as a result, in whole or in part, of Lessee's failure to perform its obligations with respect to insurance or payment of taxes, as well as any tax liabilities (including related interest and penalties) that may be incurred by the City if Lessee is required to be reclassified as an "employee" of the City in the performance of Lessee's services under this

Agreement, for federal or state tax purposes. Lessee also agrees to execute appropriate forms to allow tax auditors to disclose to the City, pursuant to 26 U.S.C. section 6103(c) or (e), the Lessee's tax reporting of income earned under this agreement for any period in which a classification issue is raised in a tax audit of the City's payroll tax matters.

The Lessee shall investigate and submit to the City a written report on any claims for damages that may be reported to the Lessee by individuals or the City.

14. Default and Termination. The parties agree that this Agreement may be terminated at any time upon their mutual agreement.

In the event of Lessee's failure to comply with any of the terms, covenants, or conditions of this Agreement, other than as hereinafter provided for failure of payment and for accounting of funds lawfully due the City, City may cancel this contract upon sixty (60) days' written notice by certified mail in the event of default by Lessee continuing for more than fifteen (15) days after written notice by certified mail of the existence of such event of default.

In the event Lessee fails to make a proper accounting of or fails to make any payment of funds to City as lawfully required, City may at its option cancel this Agreement upon five (5) days' written notice to Professional. Lessee shall have the right to cure such default within the five days unless the default involves a crime, dishonesty, or intentional misconduct by Lessee or by Lessee's agents, which should have been within the reasonable knowledge of Lessee. Provided, however, if the Lessee disputes the City's determination as to the amount of an accounting or payment, the Lessee may make such accounting or payment to the City under protest. In the event that it is determined that the City was in error, the City shall return any such funds erroneously collected together with interest at the rate earned on City general fund deposits.

In the event of bankruptcy (voluntary or involuntary), assignment by Lessee for the benefit of creditors, or receivership of Lessee's assets, this Agreement shall automatically and immediately be terminated except as to Lessee's liability for sums then due City.

Additionally, the right is reserved to either party to terminate this agreement at any time, at will and for any reason, upon one hundred and twenty (120) days' written notice to the other.

15. Assignment. This Agreement is for services personal to the Lessee and shall not be assigned nor sold nor will the premises be sublet in whole or in part without the written approval of the City.
16. Notice. All notices provided for in this Agreement shall be in writing and mailed by registered or certified mail or by express carrier such as Federal Express, postage prepaid, to the following addresses until such time as written notice of a change in address is given the other party:

City:

Mr. Don Harrison  
Golf Course Manager  
City Hall 455 N. Main  
Wichita, KS 67202

Lessee:

Mr. Steven Blaske  
MacDonald Golf Course  
840 N. Yale  
Wichita, KS 67208

17. Nondiscrimination. Lessee will not permit discrimination against any person in the use of occupancy of the Leased Premises on the grounds of race, color, sex, religion, national origin, ancestry, physical handicap, or age, except where age is a bona fide occupational qualification, and in addition, Lessee shall comply with City's Affirmative Action Program as set forth in Exhibit "A" attached hereto.
18. Kansas Law to Govern. This Agreement is entered into under the laws of the State of Kansas.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.

CITY OF WICHITA, KANSAS

By \_\_\_\_\_  
Carl Brewer, Mayor

ATTEST:

\_\_\_\_\_  
Karen Sublett, City Clerk

Approved as to Form:

\_\_\_\_\_  
Gary E. Rebenstorf,  
Director of Law and City Attorney

By \_\_\_\_\_  
Steven Blaske, "Lessee"

AGREEMENT  
FOR  
GOLF COURSE PRO SHOP SALES SERVICES  
AT  
**SIM PARK GOLF COURSE**

THIS AGREEMENT made and entered into January 1, 2012, between the City of Wichita, Kansas (hereinafter referred to as "City") and Ned Goyne (hereinafter referred to as Lessee) pertaining to the SIM PARK GOLF COURSE PRO SHOP, 2020 West Murdock, Wichita, Kansas (hereinafter referred to as "Pro Shop").

WITNESSETH:

WHEREAS, The City of Wichita is authorized to contract for services to provide golf equipment sales and golf related services; and

WHEREAS, Lessee has demonstrated ability in furnishing golf course pro shop sales service to golf course patrons which would be of value to the City; and

WHEREAS, it would be of mutual benefit to the parties that certain rights, privileges, and covenants be granted by the City to the Lessee in exchange for the consideration to be paid and services to be rendered by the Lessee for said rights, privileges, and covenants as are hereinafter set forth;

NOW, THEREFORE, in consideration of the rights and obligations established in this Agreement, the City grants to Lessee the exclusive privilege of operating the pro shop sales business at the Golf Course and Lessee agrees to provide golf course pro shop sales services to customers of the Pro Shop, all in accordance with the terms of this Agreement:

1. Term. The term of this Agreement shall be from January 1, 2012 to December 31, 2012.
2. Pro Shop Operator. Lessee is designated as the Pro Shop Operator. Golf Course Pro Shop sales services shall include, but not be limited to, merchandising a complete inventory of golf equipment, golf equipment repair, club fitting, teaching and training and all other services ordinarily rendered

and provided by the Pro Shop at a well-conducted golf course. Lessee shall bear the economic risks of conducting the business of the Pro Shop, including all costs of inventory.

3. Leased Premises. The City shall lease to, and Lessee shall have use of that portion of the Clubhouse designated as the pro shop, club repair shop, and club storage room. Lessee agrees that the Leased Premises shall be used only for the functions and activities for which they were designated as determined by the City. Further, Lessee agrees that the Leased Premises shall not be used for any illegal or ultra hazardous activities. In the event that any portion of the Leased Premises becomes subject to state *ad valorem* property taxation as a result of Lessee's rights or use of the Leased Premises under this Agreement, Lessee shall be obligated to pay all such property taxes.

This Agreement is intended to set forth contractual lease conditions on the use of the City's facilities. It further sets forth guidance and expectations for the performance of services. The provisions of this Agreement are to be interpreted as granting the Lessee the right to exercise independent judgment and the right to use his or her own methods in the provision of services subject only to the requirements of this Agreement on the results and work product sought by the City and to be reflected in the services provided to the public.

4. Hours of Operation. Lessee agrees to open the Pro Shop for business each day in accordance with the schedule of days and hours as established for the clubhouse.
5. Operating Standards and Maintenance. Lessee agrees to maintain the Leased Premises in a clean, sanitary, and aesthetically attractive condition. Lessee agrees to do no remodeling nor install any permanent fixtures or additions to the Leased Premises without first submitting a detailed written request and plan and obtaining written approval from the City.
6. Fees and Charges. Lessee agrees that all transactions involving Pro Shop sales and services, including lessons shall be recorded through the accounting system provided by the City and be deposited in City accounts daily. Lessee shall account for such transactions under the procedures set forth in this Agreement and as may be further directed in writing by the City.

The City shall reimburse to Lessee all fees, charges and income received from the provision of services and sale of goods under this Agreement on a weekly basis. Lessee shall remit to the City, as a lease payment, 5% of all gross sales excluding state sales taxes on a monthly basis. Lessee shall establish all fees and charges for goods and services subject to the right of the City to review such fees and charges for reasonableness.

7. Sale of Merchandise. Lessee is granted the exclusive right to sell golf-related equipment, apparel, and other merchandise at the Golf Course. Lessee shall assume any and all business risks and liability in the sale of such merchandise and shall be entitled to retain all income from such sale, subject only to the lease agreement and reporting requirements of this Agreement. All sales shall be conducted in accordance with all local, state, and Federal laws and regulations.
8. Sales Tax. Lessee agrees to establish a sole proprietorship, corporation, or LLC and establish a tax identification number with the State of Kansas. The Lessee agrees to pay all sales tax associated with all Pro Shop sales and submit to the City on a quarterly basis record of said payment.
9. Audit Provisions. Lessee agrees to keep complete and accurate books and records of all receipts of fees and charges and all income and expenses of all items of merchandise and professional services covered by this Agreement. The City or its authorized representative shall have the right to periodically audit the books and records of the Lessee to verify that fees have been correctly computed and paid and reports of income and expenditure correctly made. If any such audit should disclose that the Lessee has paid 98% or less of the payments due to the City for any year or if the audit discloses that reports of income and expenditures are substantially inaccurate or misleading according to generally accepted accounting standards, procedures, and principles the Lessee agrees to reimburse the City for any reasonable costs. If the Lessee disputes the audit findings of the City, the Lessee may request a review of part or all of the audit by a third party mutually agreeable to the City and the Lessee. If such review determines the audit of the City to be substantially in error, the City shall pay the cost of such review, otherwise the Lessee shall pay for

the cost of such review. In the event that payments are found to be incorrect or reports inaccurate, the Lessee shall provide appropriate true-up payments within 15 days or corrected reports within 30 days of the deficiency.

10. Federal and State Income, Self-Employment and Payroll Taxes. Lessee shall be responsible for all federal and state taxes, including all payroll taxes, F.I.C.A., F.U.T.A., self-employment tax, estimated tax payments and/or withholding due to the federal or any state government in relation to income derived by Lessee under this Agreement and any compensation provided by Lessee to its employees in connection with the performance of this Agreement.
11. Contract Evaluation. The parties hereto agree that once each year, or more often if deemed necessary in the opinion of City, City or its designated representative shall complete a performance review concerning the performance of Lessee under this Agreement.
12. Insurance. Lessee shall, at his/her own expense, procure and at all times during the terms of this Agreement and extensions thereof maintain insurance with one or more companies permitted to do business in the State of Kansas, as follows:
  - (a) Comprehensive general liability insurance including death, bodily injury, and property damage coverage with respect to any suit or claim of any kind or nature arising out of the use of the Pro Shop or the consumption or use of any goods sold or rented under the provisions of this Agreement, which shall name the City of Wichita as an additional insured and shall have limits of not less than \$500,000 per occurrence, or such other amount as is established by the Kansas Legislature as the maximum amount for which a municipality can be held liable under the Kansas Tort Claims Act. Such insurance shall include (a) broad form contractual liability insurance and (b) products and completed operations liability insurance.
  - (b) Lessee shall keep the contents of the Leased Premises and personal property of the Lessee insured at all times against loss or damage by theft, fire, lightning and other risks



covered by broadest form extended coverage insurance endorsement then in use in the State of Kansas in an amount to cover the loss.

- (c) Lessee and City waive all rights against each other for damage caused by fire or other perils to the extent covered by insurance obtained pursuant to this subparagraph or any other property insurance purchased by either party.
- (d) All policies and certificates of renewal covering the aforesaid insurance shall be subject to the approval of the City. Copies of all such insurance policies shall be filed with the City and shall be endorsed to require the insurer to furnish the City thirty (30) days' prior written notice of any cancellation of or material changes in such policies.

Lessee may at his/her own expense, carry such other insurance in his/her own name, as he/she may deem desirable. Lessee must report to the City in writing, using a report form furnished by the City, all incidents of injury or property damage occurring as a result of pro shop sales and service activity.

13. Indemnity and Hold Harmless. Lessee shall protect, indemnify, and save harmless the City from and against any and all losses, damages, and claims, for personal injury, property damage, or otherwise which may be incurred by the City or asserted against it, arising out of the use and occupancy of the Pro Shop by Lessee, his/her sub/lessees, employees or permittees, or the consumption or use of any goods sold or rented under the provisions of this Agreement, or in any manner arising out of a breach or default in the performance of the Agreement by Lessee whether such losses, damages, or claims shall occur on or outside of the Leased Premises, except to the extent caused by the negligence of the City.

Further, Lessee shall protect and indemnify the City against, and shall reimburse the City for, all liabilities incurred by the City as a result, in whole or in part, of Lessee's failure to perform its obligations with respect to insurance or payment of taxes, as well as any tax liabilities (including related interest and penalties) that may be incurred by the City if Lessee is required to be reclassified as an "employee" of the City in the performance of Lessee's services under this

Agreement, for federal or state tax purposes. Lessee also agrees to execute appropriate forms to allow tax auditors to disclose to the City, pursuant to 26 U.S.C. section 6103(c) or (e), the Lessee's tax reporting of income earned under this agreement for any period in which a classification issue is raised in a tax audit of the City's payroll tax matters.

The Lessee shall investigate and submit to the City a written report on any claims for damages that may be reported to the Lessee by individuals or the City.

14. Default and Termination. The parties agree that this Agreement may be terminated at any time upon their mutual agreement.

In the event of Lessee's failure to comply with any of the terms, covenants, or conditions of this Agreement, other than as hereinafter provided for failure of payment and for accounting of funds lawfully due the City, City may cancel this contract upon sixty (60) days' written notice by certified mail in the event of default by Lessee continuing for more than fifteen (15) days after written notice by certified mail of the existence of such event of default.

In the event Lessee fails to make a proper accounting of or fails to make any payment of funds to City as lawfully required, City may at its option cancel this Agreement upon five (5) days' written notice to Professional. Lessee shall have the right to cure such default within the five days unless the default involves a crime, dishonesty, or intentional misconduct by Lessee or by Lessee's agents, which should have been within the reasonable knowledge of Lessee. Provided, however, if the Lessee disputes the City's determination as to the amount of an accounting or payment, the Lessee may make such accounting or payment to the City under protest. In the event that it is determined that the City was in error, the City shall return any such funds erroneously collected together with interest at the rate earned on City general fund deposits.

In the event of bankruptcy (voluntary or involuntary), assignment by Lessee for the benefit of creditors, or receivership of Lessee's assets, this Agreement shall automatically and immediately be terminated except as to Lessee's liability for sums then due City.

Additionally, the right is reserved to either party to terminate this agreement at any time, at will and for any reason, upon one hundred and twenty (120) days' written notice to the other.

15. Assignment. This Agreement is for services personal to the Lessee and shall not be assigned nor sold nor will the premises be sublet in whole or in part without the written approval of the City.
16. Notice. All notices provided for in this Agreement shall be in writing and mailed by registered or certified mail or by express carrier such as Federal Express, postage prepaid, to the following addresses until such time as written notice of a change in address is given the other party:

City:

Mr. Don Harrison  
Golf Course Manager  
City Hall 455 N. Main  
Wichita, KS 67202

Lessee:

Mr. Ned Goyne  
Sim Park Golf Course  
2020 W. Murdock  
Wichita, KS 67203

17. Nondiscrimination. Lessee will not permit discrimination against any person in the use of occupancy of the Leased Premises on the grounds of race, color, sex, religion, national origin, ancestry, physical handicap, or age, except where age is a bona fide occupational qualification, and in addition, Lessee shall comply with City's Affirmative Action Program as set forth in Exhibit "A" attached hereto.
18. Kansas Law to Govern. This Agreement is entered into under the laws of the State of Kansas.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.

CITY OF WICHITA, KANSAS

By \_\_\_\_\_  
Carl Brewer, Mayor

ATTEST:

\_\_\_\_\_  
Karen Sublett, City Clerk

Approved as to Form:

\_\_\_\_\_  
Gary E. Rebenstorf,  
Director of Law and City Attorney

By \_\_\_\_\_  
Ned Goyne, "Lessee"

AGREEMENT  
FOR  
GOLF COURSE PRO SHOP SALES SERVICES  
AT  
TEX CONSOLVER GOLF COURSE

THIS AGREEMENT made and entered into January 1, 2012, between the City of Wichita, Kansas (hereinafter referred to as "City") and Chad Mullens (hereinafter referred to as "Lessee") pertaining to the TEX CONSOLVER GOLF COURSE PRO SHOP, 1931 South Tyler Road, Wichita, Kansas (hereinafter referred to as "Pro Shop").

WITNESSETH:

WHEREAS, The City of Wichita is authorized to contract for services to provide golf equipment sales and golf related services; and

WHEREAS, Lessee has demonstrated ability in furnishing golf course pro shop sales service to golf course patrons which would be of value to the City; and

WHEREAS, it would be of mutual benefit to the parties that certain rights, privileges, and covenants be granted by the City to the Lessee in exchange for the consideration to be paid and services to be rendered by the Lessee for said rights, privileges, and covenants as are hereinafter set forth;

NOW, THEREFORE, in consideration of the rights and obligations established in this Agreement, the City grants to Lessee the exclusive privilege of operating the pro shop sales business at the Golf Course and Lessee agrees to provide golf course pro shop sales services to customers of the Pro Shop, all in accordance with the terms of this Agreement:

1. Term. The term of this Agreement shall be from January 1, 2012 to December 31, 2012.
2. Pro Shop Operator. Lessee is designated as the Pro Shop Operator. Golf Course Pro Shop sales services shall include, but not be limited to, merchandising a complete inventory of golf equipment, golf equipment repair, club fitting, teaching and training and all other services ordinarily rendered

and provided by the Pro Shop at a well-conducted golf course. Lessee shall bear the economic risks of conducting the business of the Pro Shop, including all costs of inventory.

3. Leased Premises. The City shall lease to, and Lessee shall have use of that portion of the Clubhouse designated as the pro shop, club repair shop, and club storage room. Lessee agrees that the Leased Premises shall be used only for the functions and activities for which they were designated as determined by the City. Further, Lessee agrees that the Leased Premises shall not be used for any illegal or ultra hazardous activities. In the event that any portion of the Leased Premises becomes subject to state *ad valorem* property taxation as a result of Lessee's rights or use of the Leased Premises under this Agreement, Lessee shall be obligated to pay all such property taxes.

This Agreement is intended to set forth contractual lease conditions on the use of the City's facilities. It further sets forth guidance and expectations for the performance of services. The provisions of this Agreement are to be interpreted as granting the Lessee the right to exercise independent judgment and the right to use his or her own methods in the provision of services subject only to the requirements of this Agreement on the results and work product sought by the City and to be reflected in the services provided to the public.

4. Hours of Operation. Lessee agrees to open the Pro Shop for business each day in accordance with the schedule of days and hours as established for the clubhouse.
5. Operating Standards and Maintenance. Lessee agrees to maintain the Leased Premises in a clean, sanitary, and aesthetically attractive condition. Lessee agrees to do no remodeling nor install any permanent fixtures or additions to the Leased Premises without first submitting a detailed written request and plan and obtaining written approval from the City.
6. Fees and Charges. Lessee agrees that all transactions involving Pro Shop sales and services, including lessons shall be recorded through the accounting system provided by the City and be deposited in City accounts daily. Lessee shall account for such transactions under the procedures set forth in this Agreement and as may be further directed in writing by the City.

The City shall reimburse to Lessee all fees, charges and income received from the provision of services and sale of goods under this Agreement on a weekly basis. Lessee shall remit to the City, as a lease payment, 5% of all gross sales excluding state sales taxes on a monthly basis. Lessee shall establish all fees and charges for goods and services subject to the right of the City to review such fees and charges for reasonableness.

7. Sale of Merchandise. Lessee is granted the exclusive right to sell golf-related equipment, apparel, and other merchandise at the Golf Course. Lessee shall assume any and all business risks and liability in the sale of such merchandise and shall be entitled to retain all income from such sale, subject only to the lease agreement and reporting requirements of this Agreement. All sales shall be conducted in accordance with all local, state, and Federal laws and regulations.
8. Sales Tax. Lessee agrees to establish a sole proprietorship, corporation, or LLC and establish a tax identification number with the State of Kansas. The Lessee agrees to pay all sales tax associated with all Pro Shop sales and submit to the City on a quarterly basis record of said payment.
9. Audit Provisions. Lessee agrees to keep complete and accurate books and records of all receipts of fees and charges and all income and expenses of all items of merchandise and professional services covered by this Agreement. The City or its authorized representative shall have the right to periodically audit the books and records of the Lessee to verify that fees have been correctly computed and paid and reports of income and expenditure correctly made. If any such audit should disclose that the Lessee has paid 98% or less of the payments due to the City for any year or if the audit discloses that reports of income and expenditures are substantially inaccurate or misleading according to generally accepted accounting standards, procedures, and principles the Lessee agrees to reimburse the City for any reasonable costs. If the Lessee disputes the audit findings of the City, the Lessee may request a review of part or all of the audit by a third party mutually agreeable to the City and the Lessee. If such review determines the audit of the City to be substantially in error, the City shall pay the cost of such review, otherwise the Lessee shall pay for

the cost of such review. In the event that payments are found to be incorrect or reports inaccurate, the Lessee shall provide appropriate true-up payments within 15 days or corrected reports within 30 days of the deficiency.

10. Federal and State Income, Self-Employment and Payroll Taxes. Lessee shall be responsible for all federal and state taxes, including all payroll taxes, F.I.C.A., F.U.T.A., self-employment tax, estimated tax payments and/or withholding due to the federal or any state government in relation to income derived by Lessee under this Agreement and any compensation provided by Lessee to its employees in connection with the performance of this Agreement.
11. Contract Evaluation. The parties hereto agree that once each year, or more often if deemed necessary in the opinion of City, City or its designated representative shall complete a performance review concerning the performance of Lessee under this Agreement.
12. Insurance. Lessee shall, at his/her own expense, procure and at all times during the terms of this Agreement and extensions thereof maintain insurance with one or more companies permitted to do business in the State of Kansas, as follows:
  - (a) Comprehensive general liability insurance including death, bodily injury, and property damage coverage with respect to any suit or claim of any kind or nature arising out of the use of the Pro Shop or the consumption or use of any goods sold or rented under the provisions of this Agreement, which shall name the City of Wichita as an additional insured and shall have limits of not less than \$500,000 per occurrence, or such other amount as is established by the Kansas Legislature as the maximum amount for which a municipality can be held liable under the Kansas Tort Claims Act. Such insurance shall include (a) broad form contractual liability insurance and (b) products and completed operations liability insurance.
  - (b) Lessee shall keep the contents of the Leased Premises and personal property of the Lessee insured at all times against loss or damage by theft, fire, lightning and other risks



covered by broadest form extended coverage insurance endorsement then in use in the State of Kansas in an amount to cover the loss.

- (c) Lessee and City waive all rights against each other for damage caused by fire or other perils to the extent covered by insurance obtained pursuant to this subparagraph or any other property insurance purchased by either party.
- (d) All policies and certificates of renewal covering the aforesaid insurance shall be subject to the approval of the City. Copies of all such insurance policies shall be filed with the City and shall be endorsed to require the insurer to furnish the City thirty (30) days' prior written notice of any cancellation of or material changes in such policies.

Lessee may at his/her own expense, carry such other insurance in his/her own name, as he/she may deem desirable. Lessee must report to the City in writing, using a report form furnished by the City, all incidents of injury or property damage occurring as a result of pro shop sales and service activity.

13. Indemnity and Hold Harmless. Lessee shall protect, indemnify, and save harmless the City from and against any and all losses, damages, and claims, for personal injury, property damage, or otherwise which may be incurred by the City or asserted against it, arising out of the use and occupancy of the Pro Shop by Lessee, his/her sub/lessees, employees or permittees, or the consumption or use of any goods sold or rented under the provisions of this Agreement, or in any manner arising out of a breach or default in the performance of the Agreement by Lessee whether such losses, damages, or claims shall occur on or outside of the Leased Premises, except to the extent caused by the negligence of the City.

Further, Lessee shall protect and indemnify the City against, and shall reimburse the City for, all liabilities incurred by the City as a result, in whole or in part, of Lessee's failure to perform its obligations with respect to insurance or payment of taxes, as well as any tax liabilities (including related interest and penalties) that may be incurred by the City if Lessee is required to be reclassified as an "employee" of the City in the performance of Lessee's services under this

Agreement, for federal or state tax purposes. Lessee also agrees to execute appropriate forms to allow tax auditors to disclose to the City, pursuant to 26 U.S.C. section 6103(c) or (e), the Lessee's tax reporting of income earned under this agreement for any period in which a classification issue is raised in a tax audit of the City's payroll tax matters.

The Lessee shall investigate and submit to the City a written report on any claims for damages that may be reported to the Lessee by individuals or the City.

14. Default and Termination. The parties agree that this Agreement may be terminated at any time upon their mutual agreement.

In the event of Lessee's failure to comply with any of the terms, covenants, or conditions of this Agreement, other than as hereinafter provided for failure of payment and for accounting of funds lawfully due the City, City may cancel this contract upon sixty (60) days' written notice by certified mail in the event of default by Lessee continuing for more than fifteen (15) days after written notice by certified mail of the existence of such event of default.

In the event Lessee fails to make a proper accounting of or fails to make any payment of funds to City as lawfully required, City may at its option cancel this Agreement upon five (5) days' written notice to Professional. Lessee shall have the right to cure such default within the five days unless the default involves a crime, dishonesty, or intentional misconduct by Lessee or by Lessee's agents, which should have been within the reasonable knowledge of Lessee. Provided, however, if the Lessee disputes the City's determination as to the amount of an accounting or payment, the Lessee may make such accounting or payment to the City under protest. In the event that it is determined that the City was in error, the City shall return any such funds erroneously collected together with interest at the rate earned on City general fund deposits.

In the event of bankruptcy (voluntary or involuntary), assignment by Lessee for the benefit of creditors, or receivership of Lessee's assets, this Agreement shall automatically and immediately be terminated except as to Lessee's liability for sums then due City.

Additionally, the right is reserved to either party to terminate this agreement at any time, at will and for any reason, upon one hundred and twenty (120) days' written notice to the other.

15. Assignment. This Agreement is for services personal to the Lessee and shall not be assigned nor sold nor will the premises be sublet in whole or in part without the written approval of the City.
16. Notice. All notices provided for in this Agreement shall be in writing and mailed by registered or certified mail or by express carrier such as Federal Express, postage prepaid, to the following addresses until such time as written notice of a change in address is given the other party:

City:

Mr. Don Harrison  
Golf Course Manager  
City Hall 455 N. Main  
Wichita, KS 67202

Lessee:

Mr. Chad Mullens  
Tex Consolver Golf Course  
1931 S. Tyler Rd.  
Wichita, KS 67209

17. Nondiscrimination. Lessee will not permit discrimination against any person in the use of occupancy of the Leased Premises on the grounds of race, color, sex, religion, national origin, ancestry, physical handicap, or age, except where age is a bona fide occupational qualification, and in addition, Lessee shall comply with City's Affirmative Action Program as set forth in Exhibit "A" attached hereto.
18. Kansas Law to Govern. This Agreement is entered into under the laws of the State of Kansas.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.

CITY OF WICHITA, KANSAS

By \_\_\_\_\_  
Carl Brewer, Mayor

ATTEST:

\_\_\_\_\_  
Karen Sublett, City Clerk

Approved as to Form:

\_\_\_\_\_  
Gary E. Rebenstorf,  
Director of Law and City Attorney

By \_\_\_\_\_  
Chad Mullens, "Lessee"

City of Wichita  
City Council Meeting  
May 15, 2012

**TO:** Mayor and City Council

**SUBJECT:** Agreements for Design Services for Krug South Addition, Phase II (south of 21st Street North, west of 143rd Street East) (District II)

**INITIATED BY:** Department of Public Works & Utilities

**AGENDA:** Consent

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**Recommendation:** Approve the agreements.

**Background:** On February 13, 2007, the City Council approved the water, sanitary sewer drainage, sanitary sewer and paving improvements in Krug South Addition.

**Analysis:** The proposed agreements between the City and MKEC Engineering Consultants, Inc. (MKEC) provides for the design of water and storm sewer improvements. In accordance with Administrative Regulation 1.10, staff recommends that MKEC be hired for this work, as this firm provided the preliminary engineering services for the platting of the subdivision and can expedite plan preparation.

**Financial Considerations:** Payment to MKEC will be on a lump sum basis and will be paid by special assessments as follows: Water Distribution System No. 448-90278 for \$5,500 and Storm Sewer No. 629 for \$7,300, for a total contract amount of \$12,800.

**Goal Impact:** This agreement addresses the Efficient Infrastructure goal by providing the engineering design services needed for the construction of public improvements in a new subdivision.

**Legal Considerations:** The agreements have been approved as to form by the Law Department.

**Recommendation/Action:** It is recommended that the City Council approve the agreements authorize the necessary signatures.

**Attachments:** Agreements.

AGREEMENT

for

PROFESSIONAL SERVICES

between

THE CITY OF WICHITA, KANSAS

and

MKEC ENGINEERING CONSULTANTS, INC.

for

KRUG SOUTH ADDITION

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by and between the CITY OF WICHITA, KANSAS, party of the first part, hereinafter called the "CITY" and BAUGHMAN COMPANY, P.A., party of the second part, hereinafter called the "ENGINEER".

WITNESSETH: That

WHEREAS, the CITY intends to construct;

**WATER DISTRIBUTION SYSTEM NO. 448 90278** serving Lots 40 through 60, Block 2; Lots 5 through 9, Block 4, Krug South Addition (north of 21st Street North, west of 143rd Street East) (Project No. 448 90278).

NOW, THEREFORE, the parties hereto do mutually agree as follows:

I. SCOPE OF SERVICES

The ENGINEER shall furnish professional services as required for designing improvements in Silverton Addition and to perform the PROJECT tasks outlined in Exhibit A.

II. IN ADDITION, THE ENGINEER AGREES

- A. To provide the various technical and professional services, equipment, material and transportation to perform the tasks as outlined in the SCOPE OF SERVICES (Exhibit A).
- B. To attend meetings with the City and other local, state and federal agencies as necessitated by the SCOPE OF SERVICES.
- C. To make available during regular office hours, all calculations, sketches and drawings such as the CITY may wish to examine periodically during performance of this agreement.

- D. To save and hold CITY harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of ENGINEER, its agents, servants, employees, or subcontractors occurring in the performance of its services under this contract.
- E. To maintain books, documents, papers, accounting records and other evidence pertaining to costs incurred by ENGINEER and, where relevant to method of payment, to make such material available to the CITY.
- F. To comply with all Federal, State and local laws, ordinances and regulations applicable to the work, including Title VI of the Civil Rights Act of 1964, and to comply with the CITY'S Affirmative Action Program as set forth in Exhibit "B" which is attached hereto and adopted by reference as though fully set forth herein.
- G. To accept compensation for the work herein described in such amounts and at such periods as provided in Article IV and that such compensation shall be satisfactory and sufficient payment for all work performed, equipment or materials used and services rendered in connection with such work.
- H. To complete the services to be performed by ENGINEER within the time allotted for the PROJECT in accordance with Exhibit A; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond control of the ENGINEER.
- I. Covenants and represents to be responsible for the professional and technical accuracies and the coordination of all designs, drawings, specifications, plans and/or other work or material furnished by the ENGINEER under this agreement. ENGINEER further agrees, covenants and represents, that all designs, drawings, specifications, plans, and other work or material furnished by ENGINEER, its agents, employees and subcontractors, under this agreement, including any additions, alterations or amendments thereof, shall be free from negligent errors or omissions.
- J. ENGINEER shall procure and maintain such insurance as will protect the ENGINEER from damages resulting from the negligent acts of the ENGINEER, its agents, officers, employees and subcontractors in the performance of the professional services rendered under this agreement. Such policy of insurance shall be in an amount not less than \$500,000.00 subject to a deductible of \$10,000.00. In addition, a Workman's Compensation and Employer's Liability Policy shall be procured and maintained. This policy shall include an "all state" endorsement. Said insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Workman's Compensation Law. The liability limit shall be not less than:

Workman's Compensation – Statutory  
Employer's Liability - \$500,000 each occurrence.

- Further, a comprehensive general liability policy shall be procured and maintained by the ENGINEER that shall be written in a comprehensive form and shall protect ENGINEER against all claims arising from injuries to persons (other than ENGINEER'S employees) or damage to property of the CITY or others arising out of any negligent act or omission of ENGINEER, its agents, officers, employees or subcontractors in the performance of the professional services under this agreement. The liability limit shall not be less than \$500,000.00 per occurrence for bodily injury, death and property damage. Satisfactory Certificates of Insurance shall be filed with the CITY prior to the time ENGINEER starts any work under this agreement. In addition, insurance policies applicable hereto shall contain a provision that provides that the CITY shall be given thirty (30) days written notice by the insurance company before such policy is substantially changed or canceled.
- K. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The ENGINEER agrees to advise the CITY, in writing, of the person(s) designated as Project Manager not later than five (5) days following issuance of the notice to proceed on the work required by this agreement. The ENGINEER shall also advise the CITY

of any changes in the person designated Project Manager. Written notification shall be provided to the CITY for any changes exceeding one week in length of time.

III. THE CITY AGREES:

- A. To furnish all available data pertaining to the PROJECT now in the CITY'S files at no cost to the ENGINEER. Confidential materials so furnished will be kept confidential by the ENGINEER.
- B. To provide standards as required for the PROJECT; however, reproduction costs are the responsibility of the ENGINEER, except as specified in Exhibit A.
- C. To pay the ENGINEER for his services in accordance with the requirements of this agreement.
- D. To provide the right-of-entry for ENGINEER'S personnel in performing field surveys and inspections.
- E. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The CITY agrees to advise, the ENGINEER, in writing, of the person(s) designated as Project Manager with the issuance of the notice to proceed on the work required by this agreement. The CITY shall also advise the ENGINEER of any changes in the person(s) designated Project Manager. Written notification shall be provided to the ENGINEER for any changes exceeding one week in length of time.
- F. To examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by ENGINEER in a timely fashion.

IV. PAYMENT PROVISIONS

- A. Payment to the ENGINEER for the performance of the professional services required by this agreement shall be made on the basis of the lump sum fee amount specified below:

Project No. 448 90278

\$ 5,500.00

- B. When requested by the CITY, the ENGINEER will enter into a Supplemental Agreement for additional services related to the PROJECT such as, but not limited to:
  - 1. Consultant or witness for the CITY in any litigation, administrative hearing, or other legal proceedings related to the PROJECT.
  - 2. Additional design services not covered by the scope of this agreement.
  - 3. Construction staking, material testing, inspection and administration related to the PROJECT.
  - 4. A major change in the scope of services for the PROJECT.If additional work should be necessary, the ENGINEER will be given written notice by the CITY along with a request for an estimate of the increase necessary in the not-to-exceed fee for performance of such additions. No additional work shall be performed nor shall additional compensation be paid except on the basis of a Supplemental Agreement duly entered into by the parties.

V. THE PARTIES HERETO MUTUALLY AGREE:

- A. That the right is reserved to the CITY to terminate this agreement at any time, upon written notice, in the event the PROJECT is to be abandoned or indefinitely postponed, or because of the ENGINEER'S inability to proceed with the work.
- B. That the field notes and other pertinent drawings and documents pertaining to the PROJECT shall become the property of the CITY upon completion or termination of the ENGINEER'S services in accordance with this agreement; and there shall be no restriction or limitation on their further use by the CITY. Provided, however, that CITY shall hold ENGINEER harmless from any and all claims, damages or causes of action which arise out of such further use when such further use is not in connection with the PROJECT.
- C. That the services to be performed by the ENGINEER under the terms of this agreement are personal and cannot be assigned, sublet or transferred without specific consent of the CITY.
- D. In the event of unavoidable delays in the progress of the work contemplated by this agreement, reasonable extensions in the time allotted for the work will be granted by the



CITY, provided, however, that the ENGINEER shall request extensions, in writing, giving the reasons therefor.

- E. It is further agreed that this agreement and all contracts entered into under the provisions of this agreement shall be binding upon the parties hereto and their successors and assigns.
- F. Neither the CITY'S review, approval or acceptance of, nor payment for, any of the work or services required to be performed by the ENGINEER under this agreement shall be construed to operate as a waiver of any right under this agreement or any cause of action arising out of the performance of this agreement.
- G. The rights and remedies of the CITY provided for under this agreement are in addition to any other rights and remedies provided by law.
- H. It is specifically agreed between the parties executing this contract, that it is not intended by any of the provisions of any part of this contract to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this contract to maintain a suit for damages pursuant to the terms or provisions of this contract.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this agreement as of the date first written above.

BY ACTION OF THE CITY COUNCIL

\_\_\_\_\_  
Carl Brewer, Mayor

SEAL:

ATTEST:

\_\_\_\_\_  
Karen Sublett, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Gary Rebenstorf, Director of Law

MKEC ENGINEERING CONSULTANT, INC.

\_\_\_\_\_  
(Name & Title)  
Gregory J. Allison, P.E.

ATTEST:

## SCOPE OF SERVICES

The ENGINEER shall furnish engineering services as required for the development of plans, supplemental specifications and estimates of the quantities of work for the PROJECT in the format and detail required by the City Engineer for the City of Wichita. Engineering plans shall be prepared per Attachment No. 1.

In connection with the services to be provided, the ENGINEER shall:

### A. PHASE I – PLAN DEVELOPMENT

When authorized by the CITY, proceed with development of Plans for the PROJECT based on the preliminary design concepts approved by the CITY.

1. Field Surveys. Provide engineering and technical personnel and equipment to obtain survey data as required for the engineering design. Utility companies shall be requested to flag or otherwise locate their facilities within the PROJECT limits prior to the ENGINEER conducting the field survey for the PROJECT. Utility information shall be clearly noted and identified on the plans.
2. Storm Water Pollution Prevention. On projects that disturb one acre or more, the ENGINEER will prepare a storm water pollution prevention plan, prepare the necessary permit application(s) and include any provisions or requirements in the project plans and special provisions. The storm water pollution prevention plan shall also include submittal of a NOI prior to bidding; site-specific erosion control plan; and standard BMP detail sheets per Attachment No. 1.
3. Soils and Foundation Investigations. The CITY'S Engineering Division of the Department of Public Works shall provide subsurface borings and soils investigations for the PROJECT. However, the CITY may authorize the ENGINEER to direct an approved Testing Laboratory to perform subsurface borings and soils investigations for the PROJECT, which shall be reported in the format and detail required by the City Engineer for the City of Wichita. The Testing Laboratory shall be responsible for the accuracy and competence of their work. The ENGINEER'S contract with the Testing Laboratory shall provide that the Testing Laboratory is responsible to the City for the accuracy and competence of their work. The cost of soils and boring investigations shall be passed directly to the City of Wichita.
4. Review Preliminary Design Concepts. Submit preliminary design concepts for review with the City Engineer or his designated representative prior to progressing to detail aspects of the work unless waived by the City Engineer.
5. Drainage Study. When applicable, conduct a detailed study to explore alternative design concepts concerning drainage for the PROJECT. Present the findings in writing identifying recommendations to the CITY, including preliminary cost estimates, prior to development of final check plans. Such written findings and recommendations must be in a format which is self explanatory and readily understood by persons with average backgrounds for the technology involved.
6. Prepare engineering plans, plan quantities and supplemental specifications as required. Engineering plans will include incidental drainage where required and permanent traffic signing. The PROJECT'S plans and proposed special provisions shall address the requirements included in the City's Administrative Regulations 6.5, "Cleanup, Restoration or Replacement Following Construction." Also, final plans, field notes and other pertinent project mapping records are to be submitted per Attachment No. 1. The files are to be AutoCAD drawing files or DXF/DXB files. Layering, text fonts, etc. are to be reviewed and approved during the preliminary concept development phase of the design work. Text fonts other than standard AutoCAD files are to be included with drawing files. In addition to supplying the electronic files of the AutoCAD drawing files of the final plans, ENGINEER will also need to supply electronic files of the drawings in PDF format.
7. Prepare right-of-way tract maps and descriptions as required in clearly drawn detail and with sufficient reference to certificate of title descriptions. ENGINEER will perform all necessary survey work associated with marking the additional right-of-way easements. This shall include

the setting monuments of new corners for any additional right-of-way and a one time marking of the right-of-way for utility relocations.

8. Identify all potential utility conflicts and provide prints of preliminary plans showing the problem locations to each utility. ENGINEER shall meet with utility company representatives to review plans and coordinate resolution of utility conflicts prior to PROJECT letting or, if approved by the City Engineer, identify on plans conflicts to be resolved during construction. Provide to CITY utility status report identifying utility conflicts with dates by which the conflicts will be eliminated with signed utility agreements from each involved utility company. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction that were not identified and coordinated during design.
9. All applicable coordinate control points and related project staking information shall be furnished on a map on the plans, as well on CD-ROM, as a text file, along with the project PDF's. When applicable, this coordinate information will be used by the CITY for construction staking purposes.
10. All shop drawings submitted by the contractor for the PROJECT shall be reviewed and, when acceptable, approved for construction by the ENGINEER for the PROJECT.
11. The ENGINEER shall meet with effected property owners, along with City staff, at a pre-construction Public Information Meeting, as arranged by the City, to explain project design, including such issues as construction phasing and traffic control.
12. The ENGINEER shall complete permanent monumentation of all new R/W, complete and submit all necessary legal documentation for same.
13. Permits. The ENGINEER shall prepare any and all necessary permits for this PROJECT, such as the preparation of applications for U.S. Army Corps of Engineers (404) permits, Division of Water Resources permit, Kansas Department of Wildlife and Parks permit and Kansas Department of Health and Environment permit. Also if requested by the CITY, obtain construction approval from the U.S. Army Corps of Engineers and assist the CITY in coordinating the archaeological review of the PROJECT.
14. Complete and deliver field notes, plan tracings, specifications and estimates to the CITY within the time allotted for the PROJECTS as stipulated below.
  - a. Plan Development for the water improvements by **120 days from notice to proceed.** (Project No. 448 90278).

## **Attachment No. 1 to Exhibit “A” – Scope of Services**

### **Plan Submittal**

Water projects plans shall be submitted with (1) set of mylar plans; and a CD of the .dwgs and .pdfs. This includes projects that have the water plans incorporated into that project, for which the cover sheet should also be included.

Storm Sewer, Sanitary Sewer and Paving plans shall be submitted in a .dwg and .pdf format on a CD.

Paper plan submittals for KDOT projects (i.e. Field Check, ULCC, Final Check, etc.) will not change and the cover sheet mylar will be required for all projects for signature purposes. Projects that have water lines incorporated into the project are required to have those pages in a mylar format. The complete project must be submitted in a scalable .pdf format.

In addition, two (2) sets of 11”x17” plans will be submitted at the time of final .pdf submittal for ALL projects, regardless of the type.

### **Storm Water Pollution Prevention**

For any project disturbing one acre of ground or more, the design Consultant must prepare a Notice of Intent and a Storm Water Pollution Prevention Plan and submit them to the KDHE for approval. Complete copies of the approved NOI and SWP3 must be provided to the City, prior to bidding. One hard copy should be provided to the project engineer upon approval, one electronic copy should be included with your transmittal of PDF plan files, and one additional electronic copy should be sent to the attention of Mark Hall at the following address:

City of Wichita  
Environmental Services  
1900 E. 9<sup>th</sup> St. North  
Wichita, KS 67214

THIS INCLUDES **ALL** PROJECTS DISTURBING ONE ACRE OR MORE – I.E. NEW DEVELOPMENT, ARTERIAL STREETS, DIRT STREETS, BIKE PATHS, SEWER MAINS, ETC.

The City of Wichita will, under no circumstance, bid any project without first receiving copies of the KDHE approved NOI and SWP3.

The design of all City of Wichita construction projects must include the development of a site-specific erosion control plan. The site-specific erosion control plan must be included in the project plans. Every component and requirement of the erosion control plan must be separately and accurately accounted as a measured quantity bid item in the engineer’s estimate.

Please note that careful consideration must be given to the transition of BMP maintenance responsibilities throughout the course of multi-phased projects. All intended responsibilities must be clearly demonstrated by the bid items. For example, if it is intended that the contractor of a subsequent waterline project be responsible for the maintenance of silt fence installed with a preceding sanitary sewer project, a measured quantity bid item must be submitted for x-lf of silt fence maintenance.

The City’s current BMP standard detail sheets shall be included in all plans. These five sheets must be included in every plan set developed for the City of Wichita, regardless of project size.

AGREEMENT

for

PROFESSIONAL SERVICES

between

THE CITY OF WICHITA, KANSAS

and

MKEC ENGINEERING CONSULTANTS, INC.

for

KRUG SOUTH ADDITION

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by and between the CITY OF WICHITA, KANSAS, party of the first part, hereinafter called the "CITY" and BAUGHMAN COMPANY, P.A., party of the second part, hereinafter called the "ENGINEER".

WITNESSETH: That

WHEREAS, the CITY intends to construct;

**STORM WATER SEWER NO. 629** serving Lots 40 through 60, Block 2; Lots 5 through 9, Block 4, Krug South Addition (north of 21st Street North, west of 143rd Street East) (Project No. 468 84326).

NOW, THEREFORE, the parties hereto do mutually agree as follows:

II. SCOPE OF SERVICES

The ENGINEER shall furnish professional services as required for designing improvements in Silverton Addition and to perform the PROJECT tasks outlined in Exhibit A.

II. IN ADDITION, THE ENGINEER AGREES

- A. To provide the various technical and professional services, equipment, material and transportation to perform the tasks as outlined in the SCOPE OF SERVICES (Exhibit A).
- B. To attend meetings with the City and other local, state and federal agencies as necessitated by the SCOPE OF SERVICES.
- C. To make available during regular office hours, all calculations, sketches and drawings such as the CITY may wish to examine periodically during performance of this agreement.
- D. To save and hold CITY harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of

ENGINEER, its agents, servants, employees, or subcontractors occurring in the performance of its services under this contract.

- E. To maintain books, documents, papers, accounting records and other evidence pertaining to costs incurred by ENGINEER and, where relevant to method of payment, to make such material available to the CITY.
- F. To comply with all Federal, State and local laws, ordinances and regulations applicable to the work, including Title VI of the Civil Rights Act of 1964, and to comply with the CITY'S Affirmative Action Program as set forth in Exhibit "B" which is attached hereto and adopted by reference as though fully set forth herein.
- G. To accept compensation for the work herein described in such amounts and at such periods as provided in Article IV and that such compensation shall be satisfactory and sufficient payment for all work performed, equipment or materials used and services rendered in connection with such work.
- H. To complete the services to be performed by ENGINEER within the time allotted for the PROJECT in accordance with Exhibit A; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond control of the ENGINEER.
- I. Covenants and represents to be responsible for the professional and technical accuracies and the coordination of all designs, drawings, specifications, plans and/or other work or material furnished by the ENGINEER under this agreement. ENGINEER further agrees, covenants and represents, that all designs, drawings, specifications, plans, and other work or material furnished by ENGINEER, its agents, employees and subcontractors, under this agreement, including any additions, alterations or amendments thereof, shall be free from negligent errors or omissions.
- J. ENGINEER shall procure and maintain such insurance as will protect the ENGINEER from damages resulting from the negligent acts of the ENGINEER, its agents, officers, employees and subcontractors in the performance of the professional services rendered under this agreement. Such policy of insurance shall be in an amount not less than \$500,000.00 subject to a deductible of \$10,000.00. In addition, a Workman's Compensation and Employer's Liability Policy shall be procured and maintained. This policy shall include an "all state" endorsement. Said insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Workman's Compensation Law. The liability limit shall be not less than:

Workman's Compensation – Statutory  
Employer's Liability - \$500,000 each occurrence.

Further, a comprehensive general liability policy shall be procured and maintained by the ENGINEER that shall be written in a comprehensive form and shall protect ENGINEER against all claims arising from injuries to persons (other than ENGINEER'S employees) or damage to property of the CITY or others arising out of any negligent act or omission of ENGINEER, its agents, officers, employees or subcontractors in the performance of the professional services under this agreement. The liability limit shall not be less than \$500,000.00 per occurrence for bodily injury, death and property damage. Satisfactory Certificates of Insurance shall be filed with the CITY prior to the time ENGINEER starts any work under this agreement. In addition, insurance policies applicable hereto shall contain a provision that provides that the CITY shall be given thirty (30) days written notice by the insurance company before such policy is substantially changed or canceled.

- K. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The ENGINEER agrees to advise the CITY, in writing, of the person(s) designated as Project Manager not later than five (5) days following issuance of the notice to proceed on the work required by this agreement. The ENGINEER shall also advise the CITY of any changes in the person designated Project Manager. Written notification shall be provided to the CITY for any changes exceeding one week in length of time.

III. THE CITY AGREES:

- A. To furnish all available data pertaining to the PROJECT now in the CITY'S files at no cost to the ENGINEER. Confidential materials so furnished will be kept confidential by the ENGINEER.
- B. To provide standards as required for the PROJECT; however, reproduction costs are the responsibility of the ENGINEER, except as specified in Exhibit A.
- C. To pay the ENGINEER for his services in accordance with the requirements of this agreement.
- D. To provide the right-of-entry for ENGINEER'S personnel in performing field surveys and inspections.
- E. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The CITY agrees to advise, the ENGINEER, in writing, of the person(s) designated as Project Manager with the issuance of the notice to proceed on the work required by this agreement. The CITY shall also advise the ENGINEER of any changes in the person(s) designated Project Manager. Written notification shall be provided to the ENGINEER for any changes exceeding one week in length of time.
- F. To examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by ENGINEER in a timely fashion.

IV. PAYMENT PROVISIONS

- A. Payment to the ENGINEER for the performance of the professional services required by this agreement shall be made on the basis of the lump sum fee amount specified below:

Project No. 468 84326                      \$ 7,300.00

- B. When requested by the CITY, the ENGINEER will enter into a Supplemental Agreement for additional services related to the PROJECT such as, but not limited to:
  - 1. Consultant or witness for the CITY in any litigation, administrative hearing, or other legal proceedings related to the PROJECT.
  - 2. Additional design services not covered by the scope of this agreement.
  - 3. Construction staking, material testing, inspection and administration related to the PROJECT.
  - 4. A major change in the scope of services for the PROJECT.If additional work should be necessary, the ENGINEER will be given written notice by the CITY along with a request for an estimate of the increase necessary in the not-to-exceed fee for performance of such additions. No additional work shall be performed nor shall additional compensation be paid except on the basis of a Supplemental Agreement duly entered into by the parties.

V. THE PARTIES HERETO MUTUALLY AGREE:

- A. That the right is reserved to the CITY to terminate this agreement at any time, upon written notice, in the event the PROJECT is to be abandoned or indefinitely postponed, or because of the ENGINEER'S inability to proceed with the work.
- B. That the field notes and other pertinent drawings and documents pertaining to the PROJECT shall become the property of the CITY upon completion or termination of the ENGINEER'S services in accordance with this agreement; and there shall be no restriction or limitation on their further use by the CITY. Provided, however, that CITY shall hold ENGINEER harmless from any and all claims, damages or causes of action which arise out of such further use when such further use is not in connection with the PROJECT.
- C. That the services to be performed by the ENGINEER under the terms of this agreement are personal and cannot be assigned, sublet or transferred without specific consent of the CITY.
- D. In the event of unavoidable delays in the progress of the work contemplated by this agreement, reasonable extensions in the time allotted for the work will be granted by the CITY, provided, however, that the ENGINEER shall request extensions, in writing, giving the reasons therefor.
- E. It is further agreed that this agreement and all contracts entered into under the provisions of this agreement shall be binding upon the parties hereto and their successors and assigns.

- F. Neither the CITY'S review, approval or acceptance of, nor payment for, any of the work or services required to be performed by the ENGINEER under this agreement shall be construed to operate as a waiver of any right under this agreement or any cause of action arising out of the performance of this agreement.
- G. The rights and remedies of the CITY provided for under this agreement are in addition to any other rights and remedies provided by law.
- H. It is specifically agreed between the parties executing this contract, that it is not intended by any of the provisions of any part of this contract to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this contract to maintain a suit for damages pursuant to the terms or provisions of this contract.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this agreement as of the date first written above.

BY ACTION OF THE CITY COUNCIL

\_\_\_\_\_  
Carl Brewer, Mayor

SEAL:

ATTEST:

\_\_\_\_\_  
Karen Sublett, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Gary Rebenstorf, Director of Law

MKEC ENGINEERING CONSULTANT, INC.

\_\_\_\_\_  
(Name & Title)  
Gregory J. Allison, P.E.

ATTEST:

\_\_\_\_\_



## SCOPE OF SERVICES

The ENGINEER shall furnish engineering services as required for the development of plans, supplemental specifications and estimates of the quantities of work for the PROJECT in the format and detail required by the City Engineer for the City of Wichita. Engineering plans shall be prepared per Attachment No. 1.

In connection with the services to be provided, the ENGINEER shall:

A. PHASE I – PLAN DEVELOPMENT

When authorized by the CITY, proceed with development of Plans for the PROJECT based on the preliminary design concepts approved by the CITY.

1. Field Surveys. Provide engineering and technical personnel and equipment to obtain survey data as required for the engineering design. Utility companies shall be requested to flag or otherwise locate their facilities within the PROJECT limits prior to the ENGINEER conducting the field survey for the PROJECT. Utility information shall be clearly noted and identified on the plans.
2. Storm Water Pollution Prevention. On projects that disturb one acre or more, the ENGINEER will prepare a storm water pollution prevention plan, prepare the necessary permit application(s) and include any provisions or requirements in the project plans and special provisions. The storm water pollution prevention plan shall also include submittal of a NOI prior to bidding; site-specific erosion control plan; and standard BMP detail sheets per Attachment No. 1.
3. Soils and Foundation Investigations. The CITY'S Engineering Division of the Department of Public Works shall provide subsurface borings and soils investigations for the PROJECT. However, the CITY may authorize the ENGINEER to direct an approved Testing Laboratory to perform subsurface borings and soils investigations for the PROJECT, which shall be reported in the format and detail required by the City Engineer for the City of Wichita. The Testing Laboratory shall be responsible for the accuracy and competence of their work. The ENGINEER'S contract with the Testing Laboratory shall provide that the Testing Laboratory is responsible to the City for the accuracy and competence of their work. The cost of soils and boring investigations shall be passed directly to the City of Wichita.
4. Review Preliminary Design Concepts. Submit preliminary design concepts for review with the City Engineer or his designated representative prior to progressing to detail aspects of the work unless waived by the City Engineer.
5. Drainage Study. When applicable, conduct a detailed study to explore alternative design concepts concerning drainage for the PROJECT. Present the findings in writing identifying recommendations to the CITY, including preliminary cost estimates, prior to development of final check plans. Such written findings and recommendations must be in a format which is self explanatory and readily understood by persons with average backgrounds for the technology involved.
6. Prepare engineering plans, plan quantities and supplemental specifications as required. Engineering plans will include incidental drainage where required and permanent traffic signing. The PROJECT'S plans and proposed special provisions shall address the requirements included in the City's Administrative Regulations 6.5, "Cleanup, Restoration or Replacement Following Construction." Also, final plans, field notes and other pertinent project mapping records are to be submitted per Attachment No. 1. The files are to be AutoCAD drawing files or DXF/DXB files. Layering, text fonts, etc. are to be reviewed and approved during the preliminary concept development phase of the design work. Text fonts other than standard AutoCAD files are to be included with drawing files. In addition to supplying the electronic files of the AutoCAD drawing files of the final plans, ENGINEER will also need to supply electronic files of the drawings in PDF format.
7. Prepare right-of-way tract maps and descriptions as required in clearly drawn detail and with sufficient reference to certificate of title descriptions. ENGINEER will perform all necessary survey work associated with marking the additional right-of-way easements. This shall include the

setting monuments of new corners for any additional right-of-way and a one time marking of the right-of-way for utility relocations.

8. Identify all potential utility conflicts and provide prints of preliminary plans showing the problem locations to each utility. ENGINEER shall meet with utility company representatives to review plans and coordinate resolution of utility conflicts prior to PROJECT letting or, if approved by the City Engineer, identify on plans conflicts to be resolved during construction. Provide to CITY utility status report identifying utility conflicts with dates by which the conflicts will be eliminated with signed utility agreements from each involved utility company. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction that were not identified and coordinated during design.
9. All applicable coordinate control points and related project staking information shall be furnished on a map on the plans, as well on CD-ROM, as a text file, along with the project PDF's. When applicable, this coordinate information will be used by the CITY for construction staking purposes.
10. All shop drawings submitted by the contractor for the PROJECT shall be reviewed and, when acceptable, approved for construction by the ENGINEER for the PROJECT.
11. The ENGINEER shall meet with effected property owners, along with City staff, at a pre-construction Public Information Meeting, as arranged by the City, to explain project design, including such issues as construction phasing and traffic control.
12. The ENGINEER shall complete permanent monumentation of all new R/W, complete and submit all necessary legal documentation for same.
13. Permits. The ENGINEER shall prepare any and all necessary permits for this PROJECT, such as the preparation of applications for U.S. Army Corps of Engineers (404) permits, Division of Water Resources permit, Kansas Department of Wildlife and Parks permit and Kansas Department of Health and Environment permit. Also if requested by the CITY, obtain construction approval from the U.S. Army Corps of Engineers and assist the CITY in coordinating the archaeological review of the PROJECT.
14. Complete and deliver field notes, plan tracings, specifications and estimates to the CITY within the time allotted for the PROJECTS as stipulated below.
  - b. Plan Development for the water improvements by **120 days from notice to proceed.** (Project No. 468 84326).

## **Attachment No. 1 to Exhibit “A” – Scope of Services**

### **Plan Submittal**

Water projects plans shall be submitted with (1) set of mylar plans; and a CD of the .dwgs and .pdfs. This includes projects that have the water plans incorporated into that project, for which the cover sheet should also be included.

Storm Sewer, Sanitary Sewer and Paving plans shall be submitted in a .dwg and .pdf format on a CD.

Paper plan submittals for KDOT projects (i.e. Field Check, ULCC, Final Check, etc.) will not change and the cover sheet mylar will be required for all projects for signature purposes. Projects that have water lines incorporated into the project are required to have those pages in a mylar format. The complete project must be submitted in a scalable .pdf format.

In addition, two (2) sets of 11”x17” plans will be submitted at the time of final .pdf submittal for ALL projects, regardless of the type.

### **Storm Water Pollution Prevention**

For any project disturbing one acre of ground or more, the design Consultant must prepare a Notice of Intent and a Storm Water Pollution Prevention Plan and submit them to the KDHE for approval. Complete copies of the approved NOI and SWP3 must be provided to the City, prior to bidding. One hard copy should be provided to the project engineer upon approval, one electronic copy should be included with your transmittal of PDF plan files, and one additional electronic copy should be sent to the attention of Mark Hall at the following address:

City of Wichita  
Environmental Services  
1900 E. 9<sup>th</sup> St. North  
Wichita, KS 67214

THIS INCLUDES **ALL** PROJECTS DISTURBING ONE ACRE OR MORE – I.E. NEW DEVELOPMENT, ARTERIAL STREETS, DIRT STREETS, BIKE PATHS, SEWER MAINS, ETC.

The City of Wichita will, under no circumstance, bid any project without first receiving copies of the KDHE approved NOI and SWP3.

The design of all City of Wichita construction projects must include the development of a site-specific erosion control plan. The site-specific erosion control plan must be included in the project plans. Every component and requirement of the erosion control plan must be separately and accurately accounted as a measured quantity bid item in the engineer’s estimate.

Please note that careful consideration must be given to the transition of BMP maintenance responsibilities throughout the course of multi-phased projects. All intended responsibilities must be clearly demonstrated by the bid items. For example, if it is intended that the contractor of a subsequent waterline project be responsible for the maintenance of silt fence installed with a preceding sanitary sewer project, a measured quantity bid item must be submitted for x-lf of silt fence maintenance.

The City’s current BMP standard detail sheets shall be included in all plans. These five sheets must be included in every plan set developed for the City of Wichita, regardless of project size.

City of Wichita  
City Council Meeting  
May 15, 2012

**TO:** Mayor and City Council

**SUBJECT:** Agreements for Design Services for Pearson Farms 3rd Addition (south of 21st Street North, west of Maize) (District V)

**INITIATED BY:** Department of Public Works & Utilities

**AGENDA:** Consent

.....

**Recommendation:** Approve the agreement.

**Background:** On March 27, 2012, the City Council approved petitions for water system and sanitary sewer improvements in Pearson Farms 3rd Addition.

**Analysis:** The proposed agreements between the City and POE & Associates (POE) provides for the design of the improvements. In accordance with Administrative Regulation 1.10, staff recommends that POE be hired for this work, as this firm provided the preliminary engineering services for the platting of the subdivision and can expedite plan preparation.

**Financial Considerations:** Payment to POE will be on a lump sum basis of \$3,750 and will be paid by special assessments.

**Goal Impact:** This agreement addresses the Efficient Infrastructure goal by providing the engineering design services needed for the construction of public improvements in a new subdivision.

**Legal Considerations:** The agreement has been approved as to form by the Law Department.

**Recommendation/Action:** It is recommended that the City Council approve the agreement authorize the necessary signatures.

**Attachments:** Agreement.

AGREEMENT

for

PROFESSIONAL SERVICES

between

THE CITY OF WICHITA, KANSAS

and

POE & ASSOCIATES, INC.

for

PEARSON FARMS 3<sup>RD</sup> ADDITION

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by and between the CITY OF WICHITA, KANSAS, party of the first part, hereinafter called the "CITY" and POE & ASSOCIATES, INC., party of the second part, hereinafter called the "ENGINEER".

WHEREAS, the CITY intends to construct;

**WATER DISTRIBUTION SYSTEM NO. 448 90549** serving Tract A, Pearson Farms 3<sup>rd</sup> Addition (south of 21<sup>st</sup> Street North, west of Maize) (Project No. 448 90549).

**LATERAL 538, SOUTHWEST INTERCEPTOR SEWER** serving Tract A, Pearson Farms 3<sup>rd</sup> Addition (south of 21<sup>st</sup> Street North, west of Maize) (Project No. 468 84813).

NOW, THEREFORE, the parties hereto do mutually agree as follows:

I. SCOPE OF SERVICES

The ENGINEER shall furnish professional services as required for designing improvements in Pearson Farms 3<sup>rd</sup> Addition and perform the PROJECT tasks outlined in Exhibit A.

II. IN ADDITION, THE ENGINEER AGREES

- A. To provide the various technical and professional services, equipment, material and transportation to perform the tasks as outlined in the SCOPE OF SERVICES (Exhibit A).
- B. To attend meetings with the City and other local, state and federal agencies as necessitated by the SCOPE OF SERVICES.
- C. To make available during regular office hours, all calculations, sketches and drawings such as the CITY may wish to examine periodically during performance of this agreement.

- D. To save and hold CITY harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of ENGINEER, its agents, servants, employees, or subcontractors occurring in the performance of its services under this contract.
- E. To maintain books, documents, papers, accounting records and other evidence pertaining to costs incurred by ENGINEER and, where relevant to method of payment, to make such material available to the CITY.
- F. To comply with all Federal, State and local laws, ordinances and regulations applicable to the work, including Title VI of the Civil Rights Act of 1964, and to comply with the CITY'S Affirmative Action Program as set forth in Exhibit "B" which is attached hereto and adopted by reference as though fully set forth herein.
- G. To accept compensation for the work herein described in such amounts and at such periods as provided in Article IV and that such compensation shall be satisfactory and sufficient payment for all work performed, equipment or materials used and services rendered in connection with such work.
- H. To complete the services to be performed by ENGINEER within the time allotted for the PROJECT in accordance with Exhibit A; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond control of the ENGINEER.
- I. Covenants and represents to be responsible for the professional and technical accuracies and the coordination of all designs, drawings, specifications, plans and/or other work or material furnished by the ENGINEER under this agreement. ENGINEER further agrees, covenants and represents, that all designs, drawings, specifications, plans, and other work or material furnished by ENGINEER, its agents, employees and subcontractors, under this agreement, including any additions, alterations or amendments thereof, shall be free from negligent errors or omissions.
- J. ENGINEER shall procure and maintain such insurance as will protect the ENGINEER from damages resulting from the negligent acts of the ENGINEER, its agents, officers, employees and subcontractors in the performance of the professional services rendered under this agreement. Such policy of insurance shall be in an amount not less than \$500,000.00 subject to a deductible of \$10,000.00. In addition, a Workman's Compensation and Employer's Liability Policy shall be procured and maintained. This policy shall include an "all state" endorsement. Said insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Workman's Compensation Law. The liability limit shall be not less than:

Workman's Compensation – Statutory  
Employer's Liability - \$500,000 each occurrence.

- Further, a comprehensive general liability policy shall be procured and maintained by the ENGINEER that shall be written in a comprehensive form and shall protect ENGINEER against all claims arising from injuries to persons (other than ENGINEER'S employees) or damage to property of the CITY or others arising out of any negligent act or omission of ENGINEER, its agents, officers, employees or subcontractors in the performance of the professional services under this agreement. The liability limit shall not be less than \$500,000.00 per occurrence for bodily injury, death and property damage. Satisfactory Certificates of Insurance shall be filed with the CITY prior to the time ENGINEER starts any work under this agreement. In addition, insurance policies applicable hereto shall contain a provision that provides that the CITY shall be given thirty (30) days written notice by the insurance company before such policy is substantially changed or canceled.
- K. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The ENGINEER agrees to advise the CITY, in writing, of the person(s) designated as Project Manager not later than five (5) days following issuance of the notice to proceed on the work required by this agreement. The ENGINEER shall also advise the CITY of any changes in the person designated Project Manager. Written notification shall be provided to the CITY for any changes exceeding one week in length of time.

### III. THE CITY AGREES:

- A. To furnish all available data pertaining to the PROJECT now in the CITY'S files at no cost to the ENGINEER. Confidential materials so furnished will be kept confidential by the ENGINEER.
- B. To provide standards as required for the PROJECT; however, reproduction costs are the responsibility of the ENGINEER, except as specified in Exhibit A.

- C. To pay the ENGINEER for his services in accordance with the requirements of this agreement.
- D. To provide the right-of-entry for ENGINEER'S personnel in performing field surveys and inspections.
- E. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The CITY agrees to advise, the ENGINEER, in writing, of the person(s) designated as Project Manager with the issuance of the notice to proceed on the work required by this agreement. The CITY shall also advise the ENGINEER of any changes in the person(s) designated Project Manager. Written notification shall be provided to the ENGINEER for any changes exceeding one week in length of time.
- F. To examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by ENGINEER in a timely fashion.

IV. PAYMENT PROVISIONS

- A. Payment to the ENGINEER for the performance of the professional services required by this agreement shall be made on the basis of the lump sum fee amount specified below:

Project No. 448 90549	\$ _____
Project No. 468 84813	\$ _____
TOTAL	\$ _____

- B. When requested by the CITY, the ENGINEER will enter into a Supplemental Agreement for additional services related to the PROJECT such as, but not limited to:
  - 1. Consultant or witness for the CITY in any litigation, administrative hearing, or other legal proceedings related to the PROJECT.
  - 2. Additional design services not covered by the scope of this agreement.
  - 3. Construction staking, material testing, inspection and administration related to the PROJECT.
  - 4. A major change in the scope of services for the PROJECT.

If additional work should be necessary, the ENGINEER will be given written notice by the CITY along with a request for an estimate of the increase necessary in the not-to-exceed fee for performance of such additions. No additional work shall be performed nor shall additional compensation be paid except on the basis of a Supplemental Agreement duly entered into by the parties.

V. THE PARTIES HERETO MUTUALLY AGREE:

- A. That the right is reserved to the CITY to terminate this agreement at any time, upon written notice, in the event the PROJECT is to be abandoned or indefinitely postponed, or because of the ENGINEER'S inability to proceed with the work.
- B. That the field notes and other pertinent drawings and documents pertaining to the PROJECT shall become the property of the CITY upon completion or termination of the ENGINEER'S services in accordance with this agreement; and there shall be no restriction or limitation on their further use by the CITY. Provided, however, that CITY shall hold ENGINEER harmless from any and all claims, damages or causes of action which arise out of such further use when such further use is not in connection with the PROJECT.
- C. That the services to be performed by the ENGINEER under the terms of this agreement are personal and cannot be assigned, sublet or transferred without specific consent of the CITY.
- D. In the event of unavoidable delays in the progress of the work contemplated by this agreement, reasonable extensions in the time allotted for the work will be granted by the CITY, provided, however, that the ENGINEER shall request extensions, in writing, giving the reasons therefor.
- E. It is further agreed that this agreement and all contracts entered into under the provisions of this agreement shall be binding upon the parties hereto and their successors and assigns.
- F. Neither the CITY'S review, approval or acceptance of, nor payment for, any of the work or services required to be performed by the ENGINEER under this agreement shall be construed to operate as a waiver of any right under this agreement or any cause of action arising out of the performance of this agreement.
- G. The rights and remedies of the CITY provided for under this agreement are in addition to any other rights and remedies provided by law.
- H. It is specifically agreed between the parties executing this contract, that it is not intended by any of the provisions of any part of this contract to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this contract to maintain a suit for damages pursuant to the terms or provisions of this contract.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this agreement as of the date first written above.

BY ACTION OF THE CITY COUNCIL

\_\_\_\_\_  
Carl Brewer, Mayor

SEAL:

ATTEST:

\_\_\_\_\_  
Karen Sublett, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Gary Rebenstorf, Director of Law

POE & ASSOCIATES, INC.

\_\_\_\_\_  
(Name & Title)

ATTEST:

\_\_\_\_\_



## SCOPE OF SERVICES

The ENGINEER shall furnish engineering services as required for the development of plans, supplemental specifications and estimates of the quantities of work for the PROJECT in the format and detail required by the City Engineer for the City of Wichita. Engineering plans shall be prepared per Attachment No. 1.

In connection with the services to be provided, the ENGINEER shall:

### A. PHASE I – PLAN DEVELOPMENT

When authorized by the CITY, proceed with development of Plans for the PROJECT based on the preliminary design concepts approved by the CITY.

1. Field Surveys. Provide engineering and technical personnel and equipment to obtain survey data as required for the engineering design. Utility companies shall be requested to flag or otherwise locate their facilities within the PROJECT limits prior to the ENGINEER conducting the field survey for the PROJECT. Utility information shall be clearly noted and identified on the plans.
2. Storm Water Pollution Prevention. On projects that disturb one acre or more, the ENGINEER will prepare a storm water pollution prevention plan, prepare the necessary permit application(s) and include any provisions or requirements in the project plans and special provisions. The storm water pollution prevention plan shall also include submittal of a NOI prior to bidding; site-specific erosion control plan; and standard BMP detail sheets per Attachment No. 1.
3. Soils and Foundation Investigations. The CITY'S Engineering Division of the Department of Public Works shall provide subsurface borings and soils investigations for the PROJECT. However, the CITY may authorize the ENGINEER to direct an approved Testing Laboratory to perform subsurface borings and soils investigations for the PROJECT, which shall be reported in the format and detail required by the City Engineer for the City of Wichita. The Testing Laboratory shall be responsible for the accuracy and competence of their work. The ENGINEER'S contract with the Testing Laboratory shall provide that the Testing Laboratory is responsible to the City for the accuracy and competence of their work. The cost of soils and boring investigations shall be passed directly to the City of Wichita.
4. Review Preliminary Design Concepts. Submit preliminary design concepts for review with the City Engineer or his designated representative prior to progressing to detail aspects of the work unless waived by the City Engineer.
5. Drainage Study. When applicable, conduct a detailed study to explore alternative design concepts concerning drainage for the PROJECT. Present the findings in writing identifying recommendations to the CITY, including preliminary cost estimates, prior to development of final check plans. Such written findings and recommendations must be in a format which is self explanatory and readily understood by persons with average backgrounds for the technology involved.
6. Prepare engineering plans, plan quantities and supplemental specifications as required. Engineering plans will include incidental drainage where required and permanent traffic signing. The PROJECT'S plans and proposed special provisions shall address the requirements included in the City's Administrative Regulations 6.5, "Cleanup, Restoration or Replacement Following Construction." Also, final plans, field notes and other pertinent project mapping records are to be submitted per Attachment No. 1. The files are to be AutoCAD drawing files or DXF/DXB files. Layering, text fonts, etc. are to be reviewed and approved during the preliminary concept development phase of the design work. Text fonts other than standard AutoCAD files are to be included with drawing files. In addition to supplying the electronic files of the AutoCAD drawing files of the final plans, ENGINEER will also need to supply electronic files of the drawings in PDF format.
7. Prepare right-of-way tract maps and descriptions as required in clearly drawn detail and with sufficient reference to certificate of title descriptions. ENGINEER will perform all necessary survey work associated with marking the additional right-of-way easements. This shall include the setting monuments of new corners for any additional right-of-way and a one time marking of the right-of-way for utility relocations.
8. Identify all potential utility conflicts and provide prints of preliminary plans showing the problem locations to each utility. ENGINEER shall meet with utility company representatives to review plans and coordinate resolution of utility conflicts prior to PROJECT letting or, if approved by the City Engineer, identify on plans conflicts to be resolved during construction. Provide to CITY utility status report identifying utility conflicts with dates by which the conflicts will be eliminated with signed utility agreements from each involved utility company. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction that were not identified and coordinated during design.

9. All applicable coordinate control points and related project staking information shall be furnished on a map on the plans, as well on CD-ROM, as a text file, along with the project PDF's. When applicable, this coordinate information will be used by the CITY for construction staking purposes.
10. All shop drawings submitted by the contractor for the PROJECT shall be reviewed and, when acceptable, approved for construction by the ENGINEER for the PROJECT.
11. The ENGINEER shall meet with effected property owners, along with City staff, at a pre-construction Public Information Meeting, as arranged by the City, to explain project design, including such issues as construction phasing and traffic control.
12. The ENGINEER shall complete permanent monumentation of all new R/W, complete and submit all necessary legal documentation for same.
13. Permits. The ENGINEER shall prepare any and all necessary permits for this PROJECT, such as the preparation of applications for U.S. Army Corps of Engineers (404) permits, Division of Water Resources permit, Kansas Department of Wildlife and Parks permit and Kansas Department of Health and Environment permit. Also if requested by the CITY, obtain construction approval from the U.S. Army Corps of Engineers and assist the CITY in coordinating the archaeological review of the PROJECT.
14. Complete and deliver field notes, plan tracings, specifications and estimates to the CITY within the time allotted for the PROJECTS as stipulated below.
  - a. Plan Development for the water improvements by \_\_\_\_\_.  
(Project No. 448 90549).
  - b. Plan Development for the sewer improvements by \_\_\_\_\_.  
(Project No. 468 84813).

## **Attachment No. 1 to Exhibit “A” – Scope of Services**

### **Plan Submittal**

*Water* projects plans shall be submitted with (1) set of mylar plans; and a CD of the .dwgs and .pdfs. This includes projects that have the water plans incorporated into that project, for which the cover sheet should also be included.

Storm Sewer, Sanitary Sewer and Paving plans shall be submitted in a .dwg and .pdf format on a CD.

Paper plan submittals for KDOT projects (i.e. Field Check, ULCC, Final Check, etc.) will not change and the cover sheet mylar will be required for all projects for signature purposes. Projects that have water lines incorporated into the project are required to have those pages in a mylar format. The complete project must be submitted in a scalable .pdf format.

In addition, two (2) sets of 11”x17” plans will be submitted at the time of final .pdf submittal for ALL projects, regardless of the type.

### **Storm Water Pollution Prevention**

For any project disturbing one acre of ground or more, the design Consultant must prepare a Notice of Intent and a Storm Water Pollution Prevention Plan and submit them to the KDHE for approval. Complete copies of the approved NOI and SWP3 must be provided to the City, prior to bidding. One hard copy should be provided to the project engineer upon approval, one electronic copy should be included with your transmittal of PDF plan files, and one additional electronic copy should be sent to the attention of Mark Hall at the following address:

City of Wichita  
Environmental Services  
1900 E. 9<sup>th</sup> St. North  
Wichita, KS 67214

THIS INCLUDES **ALL** PROJECTS DISTURBING ONE ACRE OR MORE – I.E. NEW DEVELOPMENT, ARTERIAL STREETS, DIRT STREETS, BIKE PATHS, SEWER MAINS, ETC.

The City of Wichita will, under no circumstance, bid any project without first receiving copies of the KDHE approved NOI and SWP3.

The design of all City of Wichita construction projects must include the development of a site-specific erosion control plan. The site-specific erosion control plan must be included in the project plans. Every component and requirement of the erosion control plan must be separately and accurately accounted as a measured quantity bid item in the engineer’s estimate.

Please note that careful consideration must be given to the transition of BMP maintenance responsibilities throughout the course of multi-phased projects. All intended responsibilities must be clearly demonstrated by the bid items. For example, if it is intended that the contractor of a subsequent waterline project be responsible for the maintenance of silt fence installed with a preceding sanitary sewer project, a measured quantity bid item must be submitted for x-lf of silt fence maintenance.

The City’s current BMP standard detail sheets shall be included in all plans. These five sheets must be included in every plan set developed for the City of Wichita, regardless of project size.

City of Wichita  
City Council Meeting  
May 15, 2012

**TO:** Mayor and City Council

**SUBJECT:** Change Order No. 2- ASR Northern Diagonal Transmission Main (All Districts)

**INITIATED BY:** Department of Public Works & Utilities

**AGENDA:** Consent

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**Recommendation:** Approve Change Order No. 2.

**Background:** On July 12, 2011, the City Council approved a contract with Garney Companies to reconstruct approximately six miles of raw water pipeline in the Equus Beds Wellfield as part of the Aquifer Storage and Recovery Project. Prior to the letting of this contract, provisions for abandonment of an existing pipeline were negotiated with one landowner stating that approximately 3,500 lineal feet of old pipe would be left for the owner's use and that re-grading of the field would be performed in a certain manner. These provisions were not addressed in the contract or bidding documents and contractors were not able to calculate the cost of this work.

**Analysis:** The prices provided during the formal bid process included \$223,780 to remove or abandon the existing pipeline. While it may be less expensive to abandon the pipe in place in most instances, the salvage value of the larger pipe allowed the contractor to reduce their cost for removal. Prior knowledge of the loss of 3,500 feet of larger pipe for salvage as well as 3,500 feet of an alternate restoration method would have resulted in a higher bid price for this project.

**Financial Considerations:** The total cost of the additional work is \$69,509. The original contract amount is \$10,492,115. This change order plus a previous change order represents 0.70% of the original contract amount. Funding is available within the existing project budget.

**Goal Impact:** The project addresses the Efficient Infrastructure goal by providing reliable, compliant and secure utilities.

**Legal Considerations:** The Law Department has approved the change order as to form. The change order amount is within the 25% of construction contract cost limit set by City Council policy.

**Recommendation/Action:** It is recommended that the City Council approve Change Order No. 2 and authorize the necessary signatures.

**Attachments:** Change Order No. 2.



April 12, 2012

PUBLIC WORKS-ENGINEERING

**CHANGE ORDER**

To: Garney Construction Inc.

Project: ASR BP B3 Northern Diagonal  
Transmission Main

Change Order No.: 1002

Project No.: 788014

Purchase Order No.: 130537

OCA No.: 633972

CHARGE TO OCA No.: 633972

PPN: 788014

Please perform the following extra work at a cost not to exceed **\$69,509.26**

**Additional Work:**

Perform the following work as required by the land easement agreement on Tract 8:

Remove and replace topsoil by scraper method.

Salvage abandoned pipe to landowner in accordance with the agreement.

Remove and haul away abandoned surface elements of the existing pipeline.

**Reason for Additional Work:**

Provisions for abandonment of an existing pipeline were negotiated with a landowner affecting approximately 3,500 lineal feet of old pipe. The price for work referenced above to remove pipe and above-ground structures and restore the irrigated farmland to original condition per the agreement was negotiated with the contractor.

<b>Item</b>	<b>Negot'd/Bid</b>	<b>Qty</b>	<b>Unit Price</b>	<b>Extension</b>
Tract 8 Easmt. Work	<u>Negot'd</u>	1 ls	\$69,509.26	\$69,509.26

**TOTAL: \$69,509.26**

CIP Budget Amount: \$65,722,168.00

Original Contract Amt.: \$10,492,115.00

Consultant: Baughman

Current CO Amt.: \$69,509.26

**Exp. & Encum. To Date: \$61,522,554.44**

**Amt. of Previous CO's: \$4,318.58**

**Total of All CO's: \$73,827.84**

**CO Amount: \$69,509.26**

**% of Orig. Contract / 25% Max.: 0.70%**

**Unencum. Bal. After CO: \$4,130,104.30**

**Adjusted Contract Amt.: \$10,565,942.84**

**Recommended By:**

**Approved:**

\_\_\_\_\_  
Dennis H. Sanders  
Construction Admin Mgr  
RW Beck & Associates

\_\_\_\_\_  
Date

\_\_\_\_\_  
Stan Breitenbach, P.E.  
Special Projects Engineer

\_\_\_\_\_  
Date

**Approved:**

**Approved**

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Gary Janzen, P.E.  
Interim City Engineer

\_\_\_\_\_  
Date

**Approved**

\_\_\_\_\_  
Alan King                      Date  
Director of Public Works & Utilities

**Approved as to Form:**

\_\_\_\_\_  
Gary Rebenstorf  
Director of Law

**By Order of the City Council:**

\_\_\_\_\_  
Carl Brewer                      Date  
Mayor

**Attest:** \_\_\_\_\_  
City Clerk

Stan Breitenbach

**City of Wichita  
City Council Meeting  
May 15, 2012**

**TO:** Mayor and City Council

**SUBJECT:** Grant with the Kansas Department of Transportation (All Districts)

**INITIATED BY:** Wichita Transit

**AGENDA:** Consent

---

**Recommendation:** Approve the application for the grant and authorize the Mayor to execute the contract with the Kansas Department of Transportation (KDOT).

**Background:** The KDOT grant application process requires official action by the governing body authorizing staff to: file grant applications, execute approved grants, and administer the grant's program. The governing body's approval will authorize the City of Wichita Transit department to file for eligible state funds in support of the City's transit services. Wichita Transit staff held a public hearing on May 4, 2012, with no adverse comments.

The City of Wichita has been allotted \$1,085,375 for State Fiscal Year 2013 (July 1, 2012, through June 30, 2013), which may be used for capital or operating expenditures.

**Analysis:** The grant will provide for continued KDOT-funded operations including operator wages and fuel. No capital items will be purchased with this fiscal year's allotment.

**Financial Consideration:** The total grant request is \$1,085,375. The funds are 100% grant supported and require no local match.

**Goal Impact:** To Ensure an Efficient Infrastructure by maintaining and optimizing public facilities and assets.

**Legal Consideration:** The Law Department has reviewed and approved the contract as to form.

**Recommendation/Actions:** It is recommended that the City Council approve the application for the grant and authorize the Mayor to execute the contract.

**Attachments:** None

**Second Reading Ordinances for May 15, 2012 (first read on May 8, 2012)**

- A. \*ZON2012-00007-City amendment to Protective Overlay #221, to allow off-site signs on properties zoned GC General Commercial (“GC”); generally located on the northeast corner of 31st Street South and K-15. (District III)**

**ORDINANCE NO. 49-269**

An ordinance changing the zoning classifications or districts of certain lands located in the city of Wichita, Kansas, under the authority granted by the Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by Section 28.04.010, as amended.

- B. \*ZON2012-00008 – City zone change request from SF-5 Single-family Residential (“SF-5”) to TF-3 Two-family Residential (“TF-3”) generally located northwest of the intersection of East Central Avenue and North 159th Street East. (District II)**

**ORDINANCE NO. 49-270**

An ordinance changing the zoning classifications or districts of certain lands located in the city of Wichita, Kansas, under the authority granted by the Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by section 28.04.010, as amended.

- C. \*ZON2012-00010 – City zone change from LC Limited Commercial (“LC”) to GC General Commercial (“CG”) for a Tattoo/piercing facility; generally located west of South Seneca and north of Walker, 1227/29 S. Seneca. (District IV)**

**ORDINANCE NO. 49-271**

An ordinance changing the zoning classifications or districts of certain lands located in the city of Wichita, Kansas, under the authority granted by the Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by section 28.04.010, as amended.



City of Wichita  
City Council Meeting  
May 15, 2012

**TO:** Mayor and City Council

**SUBJECT:** SUB2012-00003 -- Plat of Mead Middle School Addition located south of Harry, east of Hydraulic. (District III)

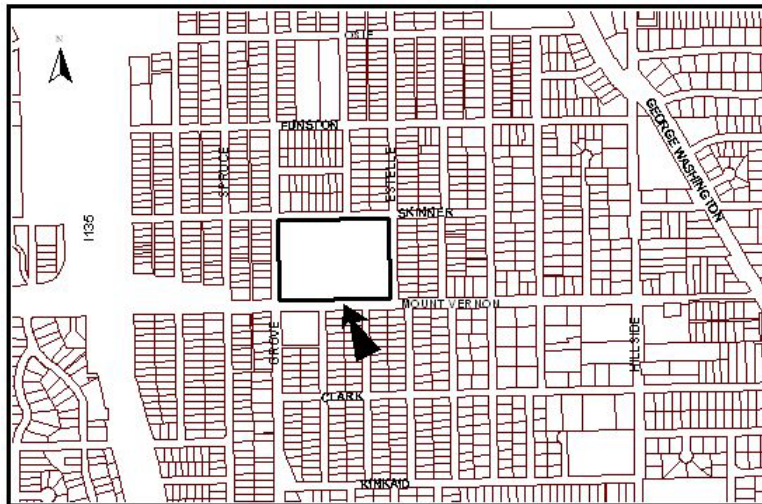
**INITIATED BY:** Metropolitan Area Planning Department

**AGENDA:** Planning (Consent)

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**Staff Recommendation:** Approve the plat.

**MAPC Recommendation:** Approve the plat. (12-0)



**Background:** The site, consisting of one lot on 10.91 acres, is located within Wichita and is zoned SF-5 Single-family Residential.

**Analysis:** Water and sewer services are available to serve the site.

The plat has been reviewed and approved by the Metropolitan Area Planning Commission subject to conditions.

**Financial Considerations:** There are no financial considerations associated with the plat.

**Goal Impact:** Approval of the plat will ensure Efficient Infrastructure through the integration of streets, utilities and other public facilities.

**Legal Considerations:** There are no legal considerations associated with the plat.

**Recommendations/Actions:** It is recommended that the City Council approve the plat and authorize the necessary signatures.

**Attachments:** There are no attachments associated with the plat.

City of Wichita  
City Council Meeting  
May 15, 2012

**TO:** Wichita Airport Authority

**SUBJECT:** Mann Aviation, LLC  
Non-Commercial Hangar Operator Use and Lease Agreement for use of 3260 N.  
Jabara Road  
Colonel James Jabara Airport

**INITIATED BY:** Department of Airports

**AGENDA:** Wichita Airport Authority (Consent)

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**Recommendation:** Approve the Agreement.

**Background:** Mann Aviation, LLC (Mann) is a local company which manages the corporate aircraft for Ron Mann, who has been in the aircraft industry for many years as the owner and operator of Airtechnics. Airtechnics was an electromechanical and interconnect distributor for customers such as Boeing, Cessna Aircraft Company, and Bombardier.

**Analysis:** Mann is now desirous of leasing 48,608 sq. ft. of land on Colonel James Jabara Airport to construct an 11,838 sq. ft. hangar. The estimated construction cost to build the hangar is \$1 million. The hangar will be built with private financing from the tenant. It is the Wichita Airport Authority's (WAA) policy that all facilities located on Wichita Mid-Continent Airport and Colonel James Jabara Airport are owned by WAA, with the exception of a few governmental facilities. The hangar will be located at the south end of the Airport, and will house Mann's aircraft. The initial term of the lease is twenty years with two, five-year option terms.

**Financial Considerations:** The land rental rate of \$0.1243 per sq. ft. will result in new annual revenue to the WAA of \$6,041 for use of the land. The land rental rate will increase three percent (3%) every year, which is consistent with the WAA's published land rental rate schedule.

**Goal Impact:** The Airport's contribution to the Economic Vitality and Quality of Life of Wichita is promoted through negotiating agreements which allow the Airport System's business partners to continue operations on the Airport, which generate rental income for the WAA and allows the Airport to continue its operation on a self-sustaining basis.

**Legal Considerations:** The Agreement has been approved as to form by the Law Department.

**Recommendations/Actions:** It is recommended that the Wichita Airport Authority approve the Agreement and authorize the necessary signatures.

**Attachments:** Agreement.

USE AND LEASE AGREEMENT

By and Between

WICHITA AIRPORT AUTHORITY  
Wichita, Kansas  
and

Mann Aviation, LLC

for

Non-Commercial Hangar Operator  
Use and Lease Agreement  
Colonel James Jabara Airport  
Wichita, Kansas

THIS AGREEMENT is entered into this May 15, 2012, between THE WICHITA AIRPORT AUTHORITY, Wichita, Kansas (LESSOR) and Mann Aviation, LLC, (LESSEE).

WHEREAS, LESSOR is a governmental or quasi-governmental entity authorized under the laws of the State of Kansas to own and operate one or more airports, with full, lawful power and authority to enter into binding legal instruments by and through its governing body; and

WHEREAS, LESSOR owns, operates, regulates, administers, and maintains the campus of Colonel James Jabara Airport (Airport); and

WHEREAS, LESSEE is an individual, or an entity authorized to operate in the state of Kansas that desires to lease a parcel or parcels of land defined below (Premises) on the campus of Colonel James Jabara Airport (Airport) from LESSOR under the terms and conditions set forth below in this Use and Lease Agreement (Agreement) for the purpose of constructing a non-commercial hangar by LESSEE on the Premises;

NOW, THEREFORE, in consideration of the mutual promises and agreements herein set forth, LESSOR and LESSEE do hereby covenant and agree as follows:

## **1. PREMISES**

LESSOR agrees to let to LESSEE, and LESSEE does hereby rent from LESSOR certain real property located at 3260 N. Jabara Rd., consisting of 48,608 sq. ft. of land (Premises), as set forth and shown on the attached **Exhibit "A"**. The Premises shall include the land and any facilities, structures and improvements located and constructed on the land.

Except as may be otherwise expressly provided in this Agreement, the taking of possession of the Premises by LESSEE shall in itself constitute acknowledgement that the Premises are in good and tenantable condition, and LESSEE agrees to accept Premises in its presently existing condition, "as is," "where is," and that LESSOR shall not be obligated to make any improvements or modifications thereto except to the extent that may otherwise be expressly provided in this Agreement.

## **2. INITIAL TERM**

The Term of this Agreement shall commence on May 1, 2012, and shall continue for a period of twenty years ("Initial Term"), with the Initial Term expiring on April 30, 2032, unless otherwise terminated under provisions agreed to herein.

## **3. OPTION TERM**

This Agreement may be renewed for two, five-year periods ("Option Term"), with the Option Term expiring on April 30, 2042, provided LESSEE is not in default hereunder beyond any applicable grace or cure periods in rental or other payments to LESSOR at the time such notice exercising the Option Term is given. If LESSEE chooses to exercise its option to renew, written notice shall be submitted to LESSOR no less than ninety (90) days prior to the expiration of the Initial Term. If LESSEE is in default of any obligation under this Agreement beyond the time periods expressly allowed in this Section, then any notice attempting to exercise the Option Term shall be void.

#### 4. LAND RENT DURING INITIAL TERM

Upon commencement of this Agreement, LESSEE shall pay to LESSOR basic land rental for the Premises located at 3260 Jabara Rd., containing 48,608 sq. ft. That rent shall be calculated as follows:

<p style="text-align: center;"><b>INITIAL TERM</b> 3260 Jabara Rd., 48,608 Sq. Ft.</p>					
Years			Rate Per Sq. Ft.	Annual	Monthly
5/01/2012	-	4/30/2013	.1243	\$6,041.97	\$ 503.50
5/01/2013	-	4/30/2014	.1280	\$6,221.82	\$ 518.49
5/01/2014	-	4/30/2015	.1318	\$6,406.53	\$ 533.88
5/01/2015	-	4/30/2016	.1358	\$6,600.97	\$ 550.08
5/01/2016	-	4/30/2017	.1399	\$6,800.26	\$ 566.69
5/01/2017	-	4/30/2018	.1441	\$7,004.41	\$ 583.70
5/01/2018	-	4/30/2019	.1484	\$7,213.43	\$ 601.12
5/01/2019	-	4/30/2020	.1529	\$7,432.16	\$ 619.35
5/01/2020	-	4/30/2021	.1575	\$7,655.76	\$ 637.98
5/01/2021	-	4/30/2022	.1622	\$7,884.22	\$ 657.02
5/01/2022	-	4/30/2023	.1671	\$8,122.40	\$ 676.87
5/01/2023	-	4/30/2024	.1721	\$8,365.44	\$ 697.12
5/01/2024	-	4/30/2025	.1773	\$8,618.20	\$ 718.18
5/01/2025	-	4/30/2026	.1826	\$8,875.82	\$ 739.65
5/01/2026	-	4/30/2027	.1881	\$9,143.16	\$ 761.93
5/01/2027	-	4/30/2028	.1937	\$9,415.37	\$ 784.61
5/01/2028	-	4/30/2029	.1995	\$9,697.30	\$ 808.11
5/01/2029	-	4/30/2030	.2055	\$9,988.94	\$ 832.41
5/01/2030	-	4/30/2031	.2117	\$10,290.31	\$ 857.53
5/01/2031	-	4/30/2032	.2181	\$10,601.40	\$ 883.45

LESSEE shall pay to LESSOR in advance on the first day of each month, without demand or invoicing, rentals for LESSEE's leased Premises as set forth herein.

LESSEE shall pay to LESSOR in advance on the first day of each month, without demand or invoicing, for both facility rental and land rental for the Premises as set forth herein. In the event LESSEE fails to make payment within ten (10) days of the dates due as set forth in this Agreement, then LESSOR, may charge LESSEE a monthly service charge of twelve percent (12%) on an annual basis for any such overdue amount, unless a lesser sum is set as the maximum allowable under state statutes on any such overdue amount, plus reasonable attorneys' and administrative fees incurred by LESSOR in attempting to obtain payment.

Any amounts due LESSOR from LESSEE for utility, maintenance, reimbursements, or other special charges will be paid by LESSEE within thirty (30) days of the date of the invoice.

## **5. FACILITY RENT DURING OPTION TERM**

The Facility Rent for all facilities, structures, fixtures and improvements on the real estate during the first Option Term period, if exercised, effective May 1, 2032, shall be set at the then-current market value of such facilities, structures, fixtures and improvements (excluding land) as determined by a single independent third-party licensed and accredited commercial property appraiser with offices in Wichita, Kansas, and experience with the local commercial property market. The appraiser shall be selected by agreement of the parties. In the event that the parties cannot agree on this selection within 15 days after notice is given for exercise of the Option Term, then this appraiser role shall be filed by designation of the chair person of the board of appraisers issuing the most recently completed condemnation action filed by the City of Wichita. The valuation established by the selected or designated appraiser shall be conclusive on the parties.

The Facility Rent for all facilities, structures, fixtures and improvements on the real estate during the second Option Term period, if exercised, effective May 1, 2037, be increased by the percentage change of the CPI-U over the previous five (5) years, except that the rent shall not be raised more than twenty percent (20%) or less than ten percent (10%) over the previous five (5) years. The term "CPI-U" shall mean the Consumer Price Index for All Urban Consumers (CPI-U) (Base: 1982-84 = 100) published by the United States Department of Labor, Bureau of Labor Statistics, or, if such index is no longer published, such similar index as shall generally be recognized as the replacement for such index.

## 6. LAND RENT DURING OPTION TERMS

It is understood and agreed that basic land rental during the Option Term, if exercised, shall be as follows:

<b>FIRST OPTION TERM</b>					
3260 Jabara Rd., 48,608 Sq. Ft.					
Years			Rate Per Sq. Ft.	Annual	Monthly
5/01/2032	-	4/30/2033	.2246	\$10,917.36	\$ 909.78
5/01/2033	-	4/30/2034	.2313	\$11,243.03	\$ 936.92
5/01/2034	-	4/30/2035	.2382	\$11,578.43	\$ 964.87
5/01/2035	-	4/30/2036	.2453	\$11,923.54	\$ 993.63
5/01/2036	-	4/30/2037	.2527	\$12,283.24	\$1,023.60

<b>SECOND OPTION TERM</b>					
3260 Jabara Rd., 48,608 Sq. Ft.					
Years			Rate Per Sq. Ft.	Annual	Monthly
5/01/2037	-	4/30/2038	.2603	\$12,652.66	\$1,048.29
5/01/2038	-	4/30/2039	.2681	\$13,031.80	\$1,079.71
5/01/2039	-	4/30/2040	.2761	\$13,420.67	\$1,111.92
5/01/2040	-	4/30/2041	.2844	\$13,824.12	\$1,145.35
5/01/2041	-	4/30/2042	.2929	\$14,237.28	\$1,179.58

## **7. OTHER FEES AND CHARGES**

It is understood and agreed by LESSEE that LESSOR may assess fees and charges to LESSEE according to rates established by LESSOR's Schedule of Fees and Charges. Such Schedule shall be amended from time to time by action of the LESSOR.

## **8. PAYMENTS**

LESSEE shall make all payments to the Wichita Airport Authority, and in a form acceptable to LESSOR. Payments made by check and reports shall be delivered or mailed to:

Wichita Airport Authority  
2173 Air Cargo Road  
Wichita, Kansas 67209

or such other address as designated in writing.

LESSEE shall pay to LESSOR in advance on the first day of each month, without demand or invoicing, facility rental for the Premises as set forth herein. In the event LESSEE fails to make payment within ten (10) days of the dates due as set forth in this Section, then LESSOR may charge LESSEE a monthly service charge of twelve percent (12%) on an annual basis for any such overdue amount, plus reasonable attorneys' and administrative fees incurred by LESSOR in attempting to obtain payment.

## **9. LESSEE'S IDENTITY**

LESSEE must be a natural person or an entity, firm, company, corporation, partnership, limited liability company, a joint venture, or any other state franchise entity which has substance under State of Kansas Law and a specific legal identity and business purpose as registered with the Secretary of State in the LESSEE's state of business residence.



## 10. PERMITTED USE OF PREMISES

Upon performance of all provisions contained in this Agreement, LESSEE shall have the right of use of the Premises for aircraft owned, leased, and/or operated and under the full and exclusive control of the LESSEE for private non-commercial purposes to store, fuel, maintain, repair, adjust, clean, and otherwise service its own aircraft by LESSEE'S own employees, contractors, subcontractors, vehicles, equipment, and resources in accordance with all applicable local, state, federal laws, ordinances, standards and regulations as well as LESSOR's Rules and Regulations, Minimum Standards, and Standard Operating Procedures. If aircraft are leased, LESSEE shall, upon request, provide the LESSOR with copies of all aircraft leases.

LESSEE shall have the right of ingress and egress, in common with others, for both vehicles and aircraft, for the benefit of its employees, invitees, contractors, agents and representatives, to be exercised in a reasonable manner. This right of ingress and egress is granted for activities incidental or related to LESSEE'S approved activities, and for no other purposes except as may be approved in writing by LESSOR. This right is subject to federal, state and local security and safety requirements and standards. As required by Kansas state statute, it is understood and agreed that the Premises shall be primarily used and occupied for aviation purposes or primarily for purposes incidental or related thereto and the primary purpose shall be for aircraft storage.

LESSEE recognizes that other tenants now and hereafter may occupy other portions of the Airport, and that such other tenants shall have the right to use public roadways, streets, ramps, taxiways, runways, access gates, lighting, beacons, navigational aids, or other conveniences for aeronautical operations, and these common facilities are not under an exclusive use lease; and LESSEE shall conduct its operations in such a manner as to not impede access by others to these common facilities, nor in any other way interfere with, nor disrupt the business of other tenants or the quiet enjoyment of their leasehold interests at the Airport.

LESSOR reserves the right to grant and/or permit other parties the right to use any portion of the Airport, except that described in Section 1, Premises, for any permitted purpose, and upon any fair and non-discriminatory terms established by the LESSOR.

LESSEE, its affiliated entities, subsidiaries, employees, agents, representatives, contractors, and subcontractors, will not transact or otherwise engage in any other activities, business, and/or services on or from the Premises, except as described in this Agreement, unless such is provided for by a separate written approval, or amendment to this Agreement, and subject to approval by LESSOR. LESSEE shall at all times maintain compliance with the LESSOR's Minimum Standards as set forth and shown on the attached **Exhibit "B"**.

## **11. PROHIBITED USE OF PREMISES**

The Premises shall not be used for any purpose not expressly authorized in Section 10, Permitted Use of Premises. The following operations, services and concessions shall be specifically prohibited on or from the Premises or any other location at the Airport:

- (a) Commercial catering, restaurant and/or lounge concessions.
- (b) Flight Schools, Chartering, Air Taxi;
- (c) Commercial (for hire) ground transportation;
- (d) Commercial "paid" parking;
- (e) Commercial hotel or lodging;
- (f) Commercial outdoor advertising;
- (g) Sale of non-aviation products and services;
- (h) Sale of aviation fuels, or other fuel or lubricant products;
- (i) Sale of airframe and powerplant maintenance or modification services;
- (j) Sale of aircraft, airframe, powerplant or accessory parts and components;
- (k) Commercial storage or parking of non-tenant owned aircraft or other vehicles or equipment;
- (l) Any services associated with or resembling fixed-base operation services;
- (m) Revenue-producing communication systems or systems not directly applicable to LESSEE's operations on the Premises;
- (n) Automobile rental service;
- (o) Any activity considered by LESSOR to not be aviation purposes or purposes incidental or related thereto in connection with a non-commercial corporate hangar facility.

## **12. NON-EXCLUSIVE USE OF CERTAIN FACILITIES**

LESSOR grants the LESSEE, in common with other users, the non-exclusive use of the Airport and appurtenances, together with all facilities, improvements and services which are now, or may hereafter be provided at, or in connection with the Airport. This use is limited to the purposes for which such facilities were designed and constructed, and for no other purposes, and is available only from time to time and on a non-exclusive use basis, according to the discretionary operational decisions of LESSOR. These facilities include, but are not limited to roadways, streets, ramps, taxiways, runways, access gates, lighting, beacons, navigational aids, or other conveniences for aeronautical operations which are not exclusively leased areas of the LESSEE or of any other tenant on the Airport.

### **13. LESSEE'S RIGHTS AND PRIVILEGES**

LESSEE shall have the following rights and privileges on the Premises and on the Airport:

- (a) The rights to install, operate, repair, and store upon the Premises all personal property and fixtures necessary for the conduct of LESSEE's lawful business.
- (b) The right of ingress and egress to and from the Premises, which rights shall extend to LESSEE's invitees, contractors, subcontractors, agents, representatives and employees; subject, however, to all reasonable security regulations;
- (c) The right in common with others authorized to do so, to use the common areas of the Airport, consisting of but not limited to roadways, streets, ramps, taxiways, runways, access gates, lighting beacons, and navigational aids.
- (d) The right to uninterrupted taxiway connection and access from the Premises to the LESSOR's air operations area (AOA) connecting and adjacent to the Premises.

### **14. LESSOR'S RIGHTS AND PRIVILEGES**

LESSOR expressly reserves from the Premises:

- (a) Mineral Rights. All gas, oil and mineral rights in and under the soil.
- (b) Water Rights. All statutory, exempt, vested, and granted appropriation rights for the use of water, and all rights to request further appropriations for the Premises.
- (c) Airspace. A public right of flight through the airspace above the surface of the Premises. This public right of flight will include the right to cause or allow in said airspace, any noise inherent in the operation of any aircraft used for navigation or flight through said airspace or landing at, taking off from, or operation on the Airport. No liability on the part of LESSOR or any Tenant will result from the exercise of this right.
- (d) Navigational Aids. The right to install, maintain and modify and/or permit others to install, maintain and modify on the Premises visual and electronic navigational aids.
- (e) Entry and Inspection of Premises. The right of LESSOR, its authorized officers, employees, agents, contractors, subcontractors, authorized government agents, or other representatives to enter upon the Premises:
  - (1) To inspect at reasonable intervals during regular business hours (or any time in case of emergency or lawful investigation) to determine whether LESSEE has complied, and is complying with the terms and conditions of this Agreement;

- (2) To Inspect Premises, facilities, and equipment for compliance with laws, regulations and/or codes of the federal, state or local government, airport rules and regulations and airport standard operating procedures; and
- (3) To construct or erect new facilities, or to perform maintenance, repair, or replacement relating to the Premises or any facility thereon, as may be required and necessary, but LESSOR shall not be obligated to exercise this option.
- (f) Radio/Wireless Communication Systems. The right to approve or withhold approval of any use of fixed RF Systems for the transmission of radio frequency signals in/on the Premises.
- (g) General Provisions. The right to exercise any and all rights set out in Section 52, General Provisions.
- (h) Signage. The right to enter onto the premises for installation, and the right to install any signage on the Premises required by law, order, rule, regulation, Airport Security Program or federal directive.

Provided that exercise by LESSOR of any such reserved rights (a) through (h) shall be without expense to the LESSEE and shall not unreasonably or materially interfere with LESSEE's use of the Premises and shall not delay LESSEE in the exercise of its rights or the performance of its duties hereunder or increase the costs of such performance.

## **15. NON-INTERFERENCE WITH AIRPORT OPERATIONS**

LESSEE covenants and agrees that it shall not allow any condition on the Premises, nor permit the conduct of any activity on such Premises, which shall materially or adversely affect the development, improvement, operation, or maintenance of the Airport or its facilities, nor shall LESSEE use or permit the Premises to be used in any manner which might interfere with the landing and take-off of aircraft from the Airport or otherwise constitute a hazard to the general public, or to LESSOR's tenants or the customers, agents, invitees, contractors, representatives and employees of those tenants.

LESSEE covenants and agrees that it shall not allow any condition on the Premises, nor permit the conduct of any activity on such Premises, which shall materially or adversely affect, infringe upon, block or interrupt the operations and business activity of other airport tenant leaseholds.

## **16. COOPERATION WITH AIRPORT DEVELOPMENT**

LESSEE understands and agrees that LESSOR may pursue Airport development, improvements and maintenance activities from time-to-time that may affect the Premises and other areas of the Airport. LESSEE agrees to work cooperatively and in good faith with the LESSOR and other tenants and contractors in development, improvement and maintenance activities to minimize any disruptions. If requested by the LESSOR, LESSEE shall cooperate with and assist the LESSOR to the greatest extent possible in the development and implementation of any plans, designs, ingress/egress, or transition that may arise in connection with such Airport development, improvement, and maintenance activities. LESSOR may temporarily or permanently close, re-route, or consent to the closing or re-routing of any method of ingress or egress on the Airport, so long as the means of ingress and egress are reasonably equivalent to current access available to LESSEE. LESSOR may temporarily close the runway, taxiways, ramps or portions thereof for purposes of maintenance, replacement, re-construction or expansion. Provided that exercise by LESSOR of any such Airport development, improvement, or maintenance shall be without expense to the LESSEE and shall not unreasonably or materially interfere with LESSEE's use of the Premises, and shall not delay LESSEE in the exercise of its rights or the performance of its duties hereunder or increase the costs of such performance.

## **17. DESIGN AND CONSTRUCTION**

LESSEE agrees to construct an 11,838 sq. ft. facility or facilities on the Premises shown on **Exhibit "A"**. LESSEE warrants that the improvements, when completed, will be necessary or useful in its development for use by LESSEE for its purposes. LESSEE agrees to proceed diligently to complete the improvements. It shall be considered an event of default under this Agreement if construction of the facilities on the Premises has not commenced within one hundred eighty (180) days from the commencement of the Initial Term of this Agreement, and shall be treated as an event of default, with notice of default given to LESSEE by LESSOR as set forth under Section 32, Cancellation by Lessor. It shall be considered an event of default under this Agreement if a certificate of occupancy is not issued by the City of Wichita for the facilities on the Premises within twelve (12) calendar months from the issuance of construction notice-to-proceed, and shall be treated as an event of default with notice of default given to LESSEE by LESSOR. LESSOR may extend such time periods in writing at its complete discretion. If the Agreement is cancelled due to failure to construct and complete the facilities as set forth in this Section, LESSEE shall, at LESSOR'S election at LESSEE'S sole expense, be required to restore the Premises to a like and comparable condition as existed at the commencement date of this Agreement within a time period of ninety (90) calendar days from expiration of LESSEE'S opportunity to cure as set out in Section 32, Cancellation by Lessor. At the end of the ninety (90)

day period described above, LESSEE shall vacate the Premises, and LESSOR shall be entitled to complete the restoration work at LESSEE'S expense, plus an additional twenty percent (20%) administrative fee to be paid by LESSEE directly to LESSOR. The parties recognize that the Premises are unique property of substantial value, and stipulate that injunctive relief is appropriate to enforce the provisions of this Section. Irrespective of the performance under this Section, LESSEE shall be obligated for all rental payments under this Agreement until the Premises are both restored and vacated.

LESSEE agrees to and shall design and construct facilities and improvements on the Premises subject to the LESSOR'S express approval of LESSEE'S proposed plans and specifications, with adherence to the terms and conditions of this Agreement and to any additional design and construction standards, Airport Standard Operating Procedures, Airport Minimum Standards, Airport Security Program, and all other applicable regulations, codes and requirements set out by LESSOR. Plans and specification review submittals shall follow accepted practice for such deliverables, and the LESSOR shall provide comments, as applicable, on each submittal. Upon the LESSOR's reasonable request, the LESSEE shall provide additional or supplemental submittals, as may be reasonably required, to fully understand the proposed improvements. No above-ground wires or other utilities shall be installed on the Premises. LESSEE shall construct and maintain at its own expense, paved taxiway access from LESSEE's apron to the Airport's existing taxiway system. All aircraft pavement provided by LESSEE shall be designed and constructed in full conformance with applicable LESSOR and FAA standards for the largest type of aircraft expected to use the premises.

LESSEE shall provide a storm water management plan developed by an engineer familiar with storm water management must be submitted as part of the preliminary plan review process. Storm water management facilities shall be designed and maintained in accordance with guidelines established by the City of Wichita, the Wichita Airport Authority, and the Federal Aviation Administration. No construction, development or subsequent activities shall be allowed to cause adverse drainage issues such as erosion, blocking the flow of water, etc. Upon LESSOR'S approval of facilities and improvements plans and specifications and upon approval and issuance of required building permits by the City of Wichita Office of Central Inspection, the LESSEE and LESSEE's employees, contractors, subcontractors, suppliers, agents, customers, business invitees, and/or representatives shall have the right to enter upon the Premises and commence construction. Stormwater best management practices (BMPs) shall be installed and maintained as required by LESSOR, and other federal, state, and local agencies having regulatory jurisdictional authority.

For any construction on the Premises, LESSEE shall purchase and maintain a builder's risk insurance policy, or require its prime contractor to carry such a policy, in a sum equal to the full

project replacement value, with insurer licensed in the State of Kansas. This coverage shall be in effect from the date of the construction notice-to-proceed and until all financial interest ceases. The Wichita Airport Authority and the City of Wichita shall be named as additional insured on such policies.

LESSEE agrees: (1) construction shall be administered and observed on-site by construction and/or design professionals to ensure compliance with the approved plans and specifications; (2) proposed construction modifications, amendments or changes to the LESSOR approved plans and specifications shall be submitted to LESSOR for prior approval; (3) shall install a construction fence or construction barricade surrounding the construction site for the duration of the construction period at LESSEE's expense (4) to repair or replace, at LESSEE's expense and to LESSOR's satisfaction, property damaged in the construction of the facilities and improvements by LESSEE, its contractors, agents or employees; and (5) to provide LESSOR, within ninety (90) days following occupancy of the facilities, a complete reproducible set of as-built record drawings and an electronic file containing the same in a format specified by LESSOR, along with a certification of project costs for all permanent improvements. Upon completion of the facility, LESSEE shall furnish a letter to LESSOR warranting that: (1) the improvements have been completed in accordance with the plans and specifications; (2) the improvements have been completed in a good and skilled manner; (3) no liens have been filed, nor is there any basis for the filing of such liens with respect to the improvements; and (4) all improvements constituting a part of the project are located or installed upon the Premises. Inaccurate or false certifications under this Section shall be a breach of this Agreement which the parties agree may only be remedied by specific performance whenever discovered. This obligation to cure deficiencies in the improvements to the Premises by performance in a good and skilled manner shall survive this Agreement.

The approvals of this Section shall be deemed approval by the Wichita Airport Authority, as LESSOR, in its capacity as a property owner and landlord, but shall not be deemed approvals as required for the Zoning Code, Building Code, or any other approval required by the City of Wichita in a regulatory or governmental capacity. Notwithstanding any other indemnity provision, LESSEE shall indemnify and hold the LESSOR harmless for any liability for regulatory or governmental approvals or the failure to obtain the same. LESSEE shall be responsible for obtaining all permits and approvals required for the construction, maintenance, operation and use of all facilities on the Premises. Improvements within the secured area and AOA shall conform to Federal Aviation Administration and Transportation Security Administration regulations, standards and criteria for design, construction, inspection and testing.

LESSEE shall use reasonable efforts to coordinate the construction of the improvements with time schedules established by the LESSOR, should other construction be occurring at the Airport

which may be impacted by this project; provided that LESSEE shall not be liable for any delays in construction occasioned by this coordination with the LESSOR that are outside of the control of the LESSEE.

LESSOR, at its sole expense, shall provide improvements to the Premises as outlined in **Exhibit “C”**, attached hereto and made a part hereof.

## **18. FUTURE ALTERATION AND IMPROVEMENT STANDARDS**

During the Initial and Option Term of this Agreement, LESSEE may, with prior written approval of LESSOR, and by lease amendment, if appropriate, add to, improve, or alter the Premises subject to all conditions set forth herein. Any such addition or alteration shall be performed in a good and skilled manner in accordance with all applicable governmental regulations, building codes, LESSOR’s design and construction standards, Airport Rules and Regulations, Airport Standard Operating Procedures, Airport Security Program, and all other applicable regulations, codes and requirements. Any such addition or alteration must be designed and constructed in a manner that will not weaken or impair the structural strength or reduce the value or functionality of the Premises or existing improvements thereon, or change the purpose for which the building or any part thereof, may be used. Design, construction and approval of any additional facility on the Premises or any alteration to existing facilities on the Premises shall adhere in all respects and be subject to all the requirements and obligations established in Section 17, Design and Construction. It shall be the responsibility of LESSEE, to file all necessary alteration and construction forms with the Director of Airports, as the LESSOR’s representative, for submission to the Federal Aviation Administration and/or the Transportation Security Administration for approval.

## **19. CONSTRUCTION COSTS**

LESSEE agrees to pay all costs incurred in connection with the construction of the new structures, facilities and improvements, and future additions, improvements and alterations, unless otherwise expressly agreed to in writing by the LESSEE and LESSOR. LESSEE agrees to make direct payment to all materials, product and service providers for all such costs as they are incurred. LESSEE shall have no right, authority, or power to bind LESSOR or any interest of LESSOR in the Premises, for the payment of any claim for labor or material or for any charge or expense incurred in the erection, construction, operation, or maintenance of said improvements and Premises. LESSEE agrees to require contractors to name the LESSOR and the City of Wichita as beneficiaries of the required performance bond and the LESSOR and the City of



Wichita as additional insureds, as their respective interests may appear, in any comprehensive accident or general liability insurance; builder's risk insurance; or any other policies required of the LESSEE relating to the construction of the Premises.

Before beginning construction, LESSEE shall, by agreement with its contractor or otherwise, provide performance, labor and material payment bonds and statutory bonds with respect to all improvements to be constructed on the Premises in the full amount for the project contract. The general contractor under any such contract shall be the principal and a surety company or companies qualified to do business in Kansas as surety. Such performance, labor and material payment bonds shall name the Authority and the City of Wichita, Kansas as the obligees. Satisfaction of this requirement shall not be the basis for an extension of the Section 17, Design and Construction.

## **20. CONSTRUCTION INSPECTIONS**

LESSOR shall have the right at any reasonable time prior to the completion of the construction of facilities and improvements and any future alterations and improvements thereto, to enter upon the Premises for the purpose of inspecting the construction thereof, to determine whether or not the improvements are being constructed substantially in accordance with the plans and specifications. If at any time during the progress of such construction, it is determined that the improvements are not being constructed substantially in accordance with the plans and specifications, upon receipt of written notice from the LESSOR, the LESSEE shall make or cause to be made such reasonable alterations as may be required to cause the improvements to substantially conform to the plans and specifications. However, LESSOR has no duty to undertake such inspections, and LESSOR will not be held to any duty of care regarding such inspections, if conducted. This Section shall have no effect on LESSEE'S obligations created under Section 17, Design and Construction.

## **21. REMOVAL AND DEMOLITION**

LESSEE shall not remove or demolish, in whole or in part, any improvements upon the Premises without the prior written consent of the LESSOR, which may, at its discretion, condition such consent upon the obligation of LESSEE replacing the same by a reasonable improvement specified in such consent. LESSEE shall obtain written consent before commencing demolition and restoration as described under Section 17, Design and Construction. Failure to obtain this consent shall entitle the Authority to such compensation as is necessary to restore the affected improvements.

## **22. TITLE TO FACILITIES, IMPROVEMENTS AND FIXTURES**

It is understood and agreed that title to the Premises and to all existing and future structures, facilities, improvements and fixtures shall be, and shall remain, exclusively with LESSOR, the Wichita Airport Authority.

LESSEE shall, without cost to LESSOR, furnish and install all non-attached furniture, movable partitions, decorations, accessories, equipment, and tools necessary to conduct its business, which shall retain status as personal property even though temporarily affixed to the Premises. Title/ownership to non-attached personal property shall remain with LESSEE.

The term "fixtures", whenever used in this Agreement, shall be construed to include all structures and fixed systems and equipment erected or installed upon the Premises, all fencing, grading and pavement, all underground wires, cables, pipes, conduits, tanks, drains and drainages; and all other property of every kind and nature which is permanently affixed to the Premises, except LESSEE's personal property.

All facilities, structures and improvements, and alterations and additions to the Premises, excluding personal property of LESSEE, placed at the expense of LESSEE, shall remain upon and be surrendered with the Premises as a part thereof, on any termination of this Agreement, for any cause, and shall remain the property of the LESSOR.

## **23. LIENS**

LESSEE shall take or cause to be taken all steps that are required or permitted by law in order to avoid the imposition of any lien upon the Premises or any improvements thereon. Should any lien be placed on the Premises or any improvements thereon, LESSEE shall cause to be removed any and all liens of any nature. This obligation includes, but is not limited to, tax liens and liens arising out of or because of any financing, construction or installation performed by or on behalf of LESSEE or any of its contractors or subcontractors upon LESSEE's Premises or arising out of or because of the performance of any work or labor to it or them at said Premises or the furnishing of any materials to it or them for use at said Premises. Should any such lien be made or filed, LESSEE shall bond against or discharge the same within thirty (30) days after actual notice of the same from any source, whether from LESSOR or otherwise, and provide written proof of discharge or bonding to LESSOR within that time. LESSEE acknowledges that its interest in the Premises is a leasehold, and that notwithstanding its construction of improvements on the Premises, such improvements accrue to the LESSOR and that it has no equity interest in the Premises which can support a mortgage lien. LESSOR consents to LESSEE's pledge of this

leasehold interest as collateral for funding of design and construction expenses.

LESSOR may consent, upon LESSEE's written request, to an assignment of rents to a governmentally regulated and insured commercial lender as partial security for financing of LESSEE's activities on the Premises, which assignment is intended to be a present transfer to such lender of all of LESSEE's rights to collect and receive rents and charges from approved users, operators, sublessees and permittees. Lender(s) shall have no rights to assign this Agreement or sublease the Premises without the prior written consent of the LESSOR as required under Section 26, Assignment and Section 27, Subleasing, Permitting and Contracting. Upon LESSEE's written consent LESSOR agrees to give Lender(s) notice of any default or cancellation of the Agreement, and allow Lender(s) the same opportunity as the LESSEE under the Agreement to correct any condition or cure any default. Nothing in this Section is intended to relieve the LESSEE of its obligations under this Agreement.

## **24. TAXES, LICENSES AND PERMITS**

LESSEE shall promptly pay all taxes, excises, license fees and permit fees of whatever nature applicable to its operation or lease of the Premises. LESSEE may elect, however, at its own cost and expense, to contest any such tax, excise, levy, or assessment. LESSEE will keep current all Federal, State or local licenses, operating certificates or permits required for the conduct of its operations. LESSEE represents and warrants to LESSOR that it has obtained all license, franchise, operating certificates or other agreements or permits necessary to operate LESSEE's operation in accordance with the terms of this Agreement, and LESSEE covenants to keep all such licenses, franchises, permits, operating certificates and other agreements in full force and effect during the Term of this Agreement.

LESSEE shall pay all lawful taxes and assessments which, during the term hereof, may become a lien upon or which may be levied by the State, County, City or any other tax levying body, upon the leased Premises or upon any taxable interest of LESSEE acquired in this lease agreement, or any taxable possessory right which LESSEE may have in or to the leased Premises, including any improvements or facilities located on the Premises, as well as LESSEE shall also pay all lawful taxes and assessments on taxable property, real or personal, owned by LESSEE in and about said Premises. Nothing in this Section shall prevent LESSEE from contesting the legality, validity or application of any such tax or assessment to the full extent LESSEE may be lawfully entitled so to do.

## **25. UTILITIES**

LESSEE shall pay all costs for utility services (whether for installation, service, administration, connection, or maintenance thereof) used by LESSEE at or upon the Premises with no responsibility or expense accruing or inuring to LESSOR, including all permits, licenses or authorizations necessary in connection therewith. Such payments by LESSEE shall be made directly to the utility supplier or service provider, except that if such utilities should be supplied by the LESSOR, then in this event, LESSEE will pay those costs to LESSOR within thirty (30) days after receipt of LESSOR'S invoice.

Unless otherwise agreed upon in writing, if LESSEE requires utilities beyond that currently provided or that are available to be extended to the Premises boundary, LESSEE agrees to pay the full cost and expense associated with the upgrade/extension/installation of all such utilities of the Premises, and to comply with all provisions for maintaining such utilities.

The LESSOR reserves for itself the right to upgrade, extend, install, maintain and repair all utilities and services on or across the Premises, whether or not such services or utilities are for the benefit of LESSEE. The LESSOR shall take all reasonable care and diligence to protect existing improvements and utilities, and shall avoid to the greatest extent possible any unreasonable interference or interruption to LESSEE's operations.

All electrical, data and communications utilities installed or caused to be installed shall be underground, and no utility services or other cables or wires shall be installed on poles or otherwise above ground. Unless otherwise provided in this Agreement, all utilities and conduits or ducts installed by anyone on the Premises shall be considered fixtures as defined under Section 22, Title to Facilities, Improvements and Fixtures, and shall become the owned property of LESSOR. All utility facilities installations shall meet the requirements of Section 18, Future Alteration and Improvement Standards of this Agreement.

Wastes not legally permitted and authorized for disposal into the storm and/or sanitary drainage system shall not be discharged, connected or introduced into storm and/or sanitary drains and the storm and/or sanitary drainage system. LESSEE shall take all reasonable precautions to prevent the discharge of material into any drainage system that would create interference with the flow therein, or that would cause a hazard or unlawful contamination thereto. A copy of LESSEE's Stormwater Pollution Prevention Plan and Spill Prevention Control and Countermeasure Plan shall be submitted to the LESSOR upon the LESSOR's request.

## **26. ASSIGNMENT**

With the exception of assignment to a parent or “holding” company or subsidiary, LESSEE shall have no right to assign or delegate any of its rights or duties pursuant to this Agreement without the prior written consent of LESSOR, which consent shall not be unreasonably withheld or delayed. Any assignment or delegation so made and so permitted shall be subject to all terms, conditions and other provisions of this Agreement. Any attempted assignment or delegation in violation of this provision shall be void and have no force or effect whatsoever. LESSOR grants consent for assignment of this Agreement from Mann Aviation, LLC or to any Ron Mann or any entity in which Ron Mann is a principal, member, partner or other form of equity holder with an equity interest of at least twenty percent (20%).

## **27. SUBLEASING, PERMITTING AND CONTRACTING**

LESSEE shall not sublease, rent or permit any persons, firms or corporations to occupy any part of the Premises, aviation or otherwise, on the Premises without having first received the prior written consent of LESSOR, which consent shall not be unreasonably withheld or delayed.

## **28. LIABILITY INSURANCE**

LESSEE shall procure, maintain and carry, at its sole cost, in accordance with and/or until completion of this Agreement all insurance, as required per the amounts as set forth below. Insurance shall be furnished by a company licensed to do business in Kansas.

Insurance certificates shall be issued on a standard ACORD form and include the NAIC number of the insuring company. Each insurance company’s rating, as shown in the latest Best’s Key Rating Guide, shall be no less than A-VII, unless otherwise approved by the LESSOR, or from a Workers’ Compensation pool approved by the State of Kansas. Insurance certificates must be received and approved by the LESSOR prior to occupancy.

All insurance certificates will state that all coverages are in effect and shall not be cancelled or non-renewed without thirty (30) days prior written notice to the Certificate Holder (10 day notice for non-payment of premium). The LESSOR reserves the right to request and receive for review certified copies of any and all insurance policies to which this Agreement is applicable prior to commencement of work. The failure of LESSOR to reject the LESSEE’S certificate of insurance shall not be deemed to constitute an acceptance by the LESSOR of a deficient certificate of insurance. If the LESSEE fails to procure or maintain any of the specified coverages the

LESSOR has the right, but not the obligation, to secure the coverage and charge the cost to the LESSEE along with a 20% administrative fee.

LESSEE shall be responsible for determining the types and limits of insurance coverage required by any approved SUBLESSEE. At a minimum, such SUBLESSEE shall carry commercial general liability (minimum of \$1,000,000 per occurrence) and commercial automobile liability (minimum of \$1,000,000 combined single limit). LESSEE shall require in any approved sublease that the Wichita Airport Authority and the City of Wichita shall be added as primary and non-contributory additional insureds on the SUBLESSEE'S commercial general liability policy.

The requirements, procurement and carrying of the required insurance shall not limit any of the LESSEE's obligations or liability under this Agreement or as a matter of law.

Where "minimum limits" of insurance are specified in this Section, such minimum insurance limits are required and considered by LESSOR to be the lowest insured amounts acceptable under this Agreement. The LESSEE is not limited or restricted whatsoever in securing additional insurance coverage and higher insured limits than those specified herein if, at the LESSEES determination and discretion and commensurate with the type of activity and associated business and operational risk, additional coverage and higher limits are necessary and appropriate.

Insurance shall include the following terms, conditions and minimum limits:

a) AUTOMOBILE LIABILITY

LESSEE shall maintain automobile insurance, including contractual liability coverage. Coverage shall include all owned, non-owned and hired automobiles used in connection with the services or other work performed on the Premises and in conjunction thereof, and shall have minimum bodily injury and property damage limits as outlined herein. An MCS-90 endorsement shall be procured, when applicable.

Combined Single Limit	\$1,000,000 Each Accident
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b) GENERAL LIABILITY

LESSEE shall maintain General Liability Insurance on an occurrence form. Coverage shall include on-going operations, product/completed operations (minimum of two years following the project completion) and Personal and Advertising Injury. Minimum limits, as outlined herein, shall be:

General Aggregate (per project)	\$2,000,000
Products/Completed Operations	\$2,000,000
Personal and Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000

The Wichita Airport Authority and the City of Wichita shall be added as primary and non-contributory additional insureds.

c) UMBRELLA/EXCESS LIABILITY COVERAGE

The LESSEE shall provide minimum Umbrella/Excess liability limits (excess of Employers Liability, Commercial General Liability and Commercial Automobile Liability) of:

Each Occurrence Limit	\$2,000,000
Annual Aggregate Limit	\$2,000,000

The Wichita Airport Authority and the City of Wichita shall be added as primary and non-contributory additional insureds covered under this umbrella/excess liability coverage.

d) BUILDER'S RISK COVERAGE

The LESSEE shall provide builder's risk coverage during any facility construction sufficient to cover the requirements set out in Section 17, Design and Construction.

The Wichita Airport Authority and the City of Wichita shall be added as primary and non-contributory additional insureds covered under this liability coverage.

LESSEE agrees that in the event of future changes in the law or upon notice by the LESSOR, the minimum levels of insurance required by this Section may be increased within the bounds of commercial reasonableness.

LESSEE agrees, prior to the commencement of the Agreement, to provide LESSOR with copies of all policies or certificates evidencing that such insurance are in full force and effect, and stating the terms thereof. This Agreement shall not commence until policies of insurance

satisfactory to LESSOR are supplied by LESSEE. LESSEE shall provide LESSOR undated certificates of insurance the earlier of annually, or upon renewal, which certificate shall demonstrate the coverage required in this Section for the ensuing 12 month period. Failure to maintain satisfactory insurance policies in force shall constitute grounds for cancellation of this Agreement as set forth in Section 32, Cancellation by Lessor, of this Agreement.

LESSEE shall be solely responsible for obtaining insurance policies that provide coverage for losses of LESSEE-owned property. Authority shall not be required to provide such insurance coverage or be responsible for payment of LESSEE's cost for such insurance.

## **29. ALL RISK PROPERTY INSURANCE**

LESSEE, at its expense, throughout the term of this Agreement, shall cause the structures, facilities, improvements and fixtures on the Premises to be insured against loss or damage by fire or other casualty equal to the full replacement value thereof and by an all risk coverage policy furnished by a company licensed to do business in Kansas. Such policy shall not exclude, or in the alternative, shall carry full coverage endorsements for damage from tornado, hail, flood, and sewer backup, and shall furnish LESSOR a certificate evidencing such insurance. The proceeds of any payments made under such insurance policy or policies shall be used to rehabilitate or reconstruct the insured facilities, subject to the provisions governing damage or destruction found at Section 48, Damage and Destruction. LESSEE agrees, prior to the commencement of the Agreement, to provide LESSOR with copies of all policies or certificates evidencing that such insurance are in full force and effect, and stating the terms thereof. This Agreement shall not commence until policies of insurance satisfactory to LESSOR are supplied by LESSEE. LESSEE shall provide LESSOR undated certificates of insurance the earlier of annually, or upon renewal, which certificate shall demonstrate the coverage required in this Section for the ensuing 12 month period. Failure to maintain satisfactory insurance policies in force shall constitute grounds for cancellation of this Agreement.



### **30. SUBROGATION OF INSURANCE**

LESSOR hereby waives any and all rights of recovery against LESSEE for or arising out of damage or destruction of the building, or the demised Premises, or any other property of LESSOR, from causes then included under any of its property insurance policies, to the extent such damage or destruction is covered by the proceeds of such policies, whether or not such damage or destruction shall have been caused by the negligence of LESSEE, its agents, servants or employees or otherwise, but only to the extent that its insurance policies then in force permit such waiver without diminution of LESSOR coverage.

LESSEE hereby waives any and all rights of recovery against LESSOR for or arising out of damage to or destruction of any property of LESSEE from causes then included under any of its property insurance policies, to the extent such damage or destruction is covered by the proceeds of said policies, whether or not such damage or destruction shall have been caused by the negligence of LESSOR, its agents, servants or employees or otherwise, but only to the extent that its insurance policies then in force permit such waiver.

### **31. LOSS OF PERSONAL PROPERTY**

Any personal property of LESSEE or others placed in or upon the Premises shall be at the sole risk of the LESSEE, and LESSOR shall not be responsible or liable for any loss, damage and replacement thereto, regardless of the cause of such loss or damage, and the LESSEE waives all rights of subrogation against recovery from the LESSOR for such loss or damage unless such loss or damage is the result of the LESSOR's negligence.

### **32. CANCELLATION BY LESSOR**

The LESSOR, in addition to any other rights to which it may be entitled by law or otherwise, may cancel this Agreement by giving LESSEE written notice in the event of default by LESSEE under this Agreement continuing for more than sixty (60) days after the LESSEE's receipt of written notice of such event of default and opportunity to cure from the LESSOR, upon or after the happening of any one of the following events:

- (a) LESSEE shall file a voluntary petition in bankruptcy or that proceedings in bankruptcy shall be instituted against it and LESSEE is thereafter adjudicated bankrupt pursuant to such proceedings;
- (b) A court shall take jurisdiction of LESSEE and its assets pursuant to proceedings brought under the provisions of any Federal reorganization act;
- (c) Receiver of LESSEE's assets shall be appointed;
- (d) LESSEE shall be divested of its estate herein by other operation of law;
- (e) LESSEE shall fail to meet its construction commencement or completion requirements set out in Section 17, Design and Construction.
- (f) LESSEE shall fail to perform, keep and observe any of the obligations, terms, warranties or conditions contained in this Agreement that on the part of LESSEE are to be performed, kept or observed.

If any such condition or default cannot reasonably be corrected within the 60-day period and LESSEE has demonstrated due diligence with respect to curing said default, then, at the LESSOR's sole discretion, such cure period may be extended for consecutive periods of 30 days, as long as diligent progress is made toward cure, with a reasonably foreseeable resolution date. Under such circumstances, default may be treated as cured until cured. Should diligent progress cease, or the reason for default become apparent as insoluble, then the term shall cease and expire at the end of the 30-day extension then in effect.

Acceptance of rental by LESSOR for any period or periods after a notice of default is issued by LESSOR of any of the obligations, terms, warranties and conditions herein contained to be performed, kept and observed by LESSEE shall not be deemed a waiver of any other right on the part of LESSOR to cancel this Agreement for failure by LESSEE so to perform, keep and observe any of the obligations, terms, warranties, or conditions hereof to be performed, kept and observed. No waiver of default by LESSOR of any of the obligations, terms, warranties or conditions hereof to be performed, kept and observed by LESSEE, shall be construed to be or act as a waiver of any subsequent default of any of the obligations, terms, warranties or conditions herein contained to be performed, kept and observed by LESSEE.

### **33. CANCELLATION BY LESSEE**

The LESSEE, in addition to any other rights to which it may be entitled by law or otherwise, may cancel this Agreement by giving LESSOR written notice in the event of default by LESSOR under this Agreement continuing for more than sixty (60) days after the LESSOR's receipt of written notice of such event of default and opportunity to cure from the LESSEE, upon or after the happening of any one of the following events:

(a) Issuance by any court of competent jurisdiction of a permanent injunction in any way preventing or restraining the use of the Airport or any major part thereof for Airport purposes and the remaining in full force of such permanent injunction for a period of at least one hundred eighty (180) days.

(b) Inability of the LESSEE to use, for a period in excess of one hundred eighty (180) days, the Airport or any part of the facility because of any law, order, rule, regulation or other action or non-action of the Federal Aviation Administration or any other governmental authority, or because of fire, earthquake, other casualties or acts of God or the public enemy.

(c) LESSOR shall fail to perform, keep and observe any of the obligations, terms, warranties or conditions contained in this Agreement that on the part of LESSOR are to be performed, kept or observed:

- i. LESSEE may give LESSOR written notice to correct such condition or cure such default, and if any such condition or default shall continue for sixty (60) days after receipt of such notice by LESSOR, LESSEE may terminate this Agreement and the term hereof shall cease and expire at the end of such sixty (60) days in the same manner and to the same effect as if it were the expiration of the Initial or Option Term, unless such condition or default cannot reasonably be corrected within the 60-day period and LESSOR has demonstrated due diligence with respect to curing said default, then such cure period may be extended for consecutive periods of 30 days, as long as diligent progress is made toward cure, with a reasonably foreseeable resolution date. Under such circumstances, default may be treated as cured until cured. Should diligent progress cease, or the reason for default become apparent as insoluble, then the term shall cease and expire at the end of the 30-day extension then in effect;

(d) Assumption by the United States Government or any other authorized agency thereof of the operation, control or use of the Airport and the facility herein described, or of any substantial part or parts thereof in such a manner as to substantially restrict the LESSEE for a period of one hundred eighty (180) days from operating on and within the facility.

(e) In the event of destruction of the facilities, improvements, or the demised Premises as more fully described in Section 48, Damage or Destruction.

### **34. MAINTENANCE AND REPAIR**

LESSEE shall maintain and keep in good repair and condition at its sole cost and expense the Premises as follows:

(a) Exterior of structures, and all exterior mechanical systems (heating, ventilation and air conditioning, and associated motors, boilers, chillers and ducting). "Exterior of structures" shall include but is not limited to the roofs, exterior façade and siding, exterior walls, gutters, downspouts, and load bearing structures of the buildings.

(b) The interior of all structures on the Premises including, but not limited to leasehold improvements, glass, paint, ballast and light bulb replacement, doorways, doors, walls, floors, plumbing, electrical, interior mechanical systems (heating, ventilation and air conditioning, and associated motors, boilers, chillers, ducting and filters), decorations and finishes, plumbing fixtures, equipment and furnishings, telephone, communication and data cables, conduit and accessories, piping, motors, signs, and any other repairs as required or necessary to keep all structures on the Premises in proper condition for the conduct of business.

(c) Grading and drainage systems and drains, paving, lighting, parking lots, fencing, streets and roadways within the Premises.

(d) Connection of all utilities including, but not limited to, underground utility lines and connections within the leased Premises, connection and other fees.

(e) From time to time and as often as reasonably required by LESSOR and in accordance with state and local fire codes, conduct appropriate tests of all fire monitoring, alarm and extinguishing equipment, systems and apparatus located on the Premises. Keep in proper functioning order all fire suppression and extinguishing systems and equipment located on the Premises as required by LESSOR, and in accordance with NFPA, and state and local fire codes.

(f) All janitorial service, landscaping, landscape maintenance and mowing, and daily routine Premises clean-up work and trash removal to keep the Premises in good and tenantable condition throughout the term of this Agreement.

(g) LESSEE shall be responsible for the removal and disposal of garbage, debris, contaminants and any other waste material (whether solid or liquid) arising out of its occupancy of the leased Premises or out of its operation. Such removal shall conform to all governmental requirements and regulations as more fully described herein. Such removal and disposal of garbage, debris, contaminants, or other waste material is understood to include routine clean-up of the Premises. LESSEE shall immediately react and take prompt corrective actions to remove and dispose of any paper, garbage and debris on Premises upon demand of LESSOR. LESSEE shall provide, and screen from public view, suitable covered receptacles for all garbage, trash and other refuse. Piling of boxes, cartons, barrels, pallets

or other similar items in an unsightly or unsafe manner on or about the Premises is forbidden.

(h) Should LESSEE fail to perform its upkeep, maintenance and repair responsibilities, LESSOR may, but is not obligated to, perform maintenance and make repairs thereon and thereto which it determines to be necessary, charging the same to the expense of LESSEE upon thirty (30) days prior written notice of its intent to do so; except in case of emergency action taken in order to protect against personal injury or property damage, for which no notice is necessary, plus a twenty percent (20%) administrative fee.

LESSOR shall be responsible for maintenance, repair and replacement of paved surfaces and storm drainage systems on the Airport not within or upon the Premises; however, LESSEE shall be responsible for the repair or replacement of any damaged paved surfaces and/or sub-grade on the Airport that may be caused due to the LESSEE's negligence or intentional misuse, or consent to misuse, of such facilities including but not limited to exceeding the weight bearing capacity limits of the pavements.

### **35. SNOW AND ICE REMOVAL**

LESSEE shall be responsible for all snow and ice removal on the Premises. Aircraft parking ramps and other Air Operations Areas within the Premises shall be maintained to a winter surface condition safe for aircraft operations, and safe for customers and employees moving and working on the ramp. At no time shall LESSEE engage in snow and ice removal beyond the Premises without the prior approval of the LESSOR.

Snow piles, windrows or other accumulations of snow shall not:

- (a) Be closer than twenty five feet from any security fence;
- (b) Block any access gates or controls;
- (c) Block or impede any taxiway or taxi lane;
- (d) Impose an obstruction within the object free area (OFA) of any taxiway or taxi lane;
- (e) Infringe upon, block or interrupt the business of other airport tenant leaseholds.

Snow piles and accumulations requiring removal may be stored on pre-approved/arranged paved or non-paved areas.

Only FAA approved dry and liquid chemicals may be used for de-icing or snow removal on aircraft operating surfaces, as set forth in Advisory Circular 150/5200-30, current edition, or as may be amended, *Airport Winter Operations and Safety*, Section 4-6 *Approved Chemicals*, current edition, or as may be amended.

The use of snow and ice removal contractors may be authorized subject to prior written approval by LESSOR, and subject to acceptable completion of contractor employee training, and other reasonable safety requirements and standards that LESSOR may impose, including but not limited to compliance with Airport Rules and Regulations, and Standard Operating Procedures. All such snow and ice removal contractors shall maintain a general liability insurance policy of not less than \$2,000,000 limit, naming LESSEE, LESSOR and the City of Wichita as additional insureds.

LESSOR shall be responsible for snow and ice removal on paved surfaces of the Airport not within the Premises.

### **36. LANDSCAPING**

LESSEE shall provide and install appropriate landside landscaping and screening, including lawn, shrubbery, trees, bushes, and other plantings and screening on the Premises as a part of the construction of the improvements. All proposed landscaping plans and screening designs shall be submitted to the LESSOR for review and approval, which approval shall not be unreasonably withheld or unduly delayed. Such landscaping shall be in accordance with the Airport's design guidelines in effect at that time, and shall not be installed in such a manner so as to create a wildlife food source, habitat and hazard to aircraft operations. LESSEE agrees to maintain and/or replace such landscaping installations at least seasonally throughout the term of this Agreement or any extension thereof should they fail to survive in a manner aesthetically pleasing to LESSOR, a judgment which is to be exercised with reasonable discretion.

### **37. EXTERIOR SIGNS AND ADVERTISING**

LESSEE agrees that no signs or advertising material shall be erected on the Premises or on any improvement or facility on the Premises unless the design and layout of such signs and advertising material, together with the materials and method of construction of such signs and advertising material, shall have been approved in advance in writing by LESSOR, which approval shall not be unreasonably withheld or unduly delayed.

LESSEE shall not erect, install, operate, nor cause or permit to be erected, installed, or operated upon any non-leased Premises of the Airport property, any signs, banners, or other similar devices for its own business, or the business of others. This provision shall not have the effect of limiting or restricting LESSEE's right to enter into an agreement with LESSOR'S authorized and

permitted marketing, advertising or signage agency for the display of informational, marketing or advertising media at approved designated locations on Airport property.

### **38. PORTABLE STORAGE CONTAINERS/STRUCTURES**

Unless specifically approved in writing, and under conditions specified by LESSOR, LESSEE shall not place or allow to be placed upon Premises, any type of portable storage container, trailer, unit, box, or barrel which is used to store merchandise and/or equipment and supplies outside of an enclosed permanent building or structure, which does not qualify as a building or structure under Title 18 of the Code of the City of Wichita. Unless specifically approved, and under conditions specified by LESSOR, LESSEE shall not place or allow to be placed upon Premises, any type of portable or temporary structure, trailer, mobile home, modular structure or device.

LESSOR will not unreasonably withhold approval of such container(s) and structure(s) if such is of a temporary nature for the purpose of supporting construction, alteration or improvement activity, or other approved project.

### **39. GRANTING OF EASEMENTS**

LESSEE shall not (i) grant easements, licenses and other rights or privileges in the nature of easements with respect to the land, or (ii) release existing easements, licenses, right-of-ways and other rights or privileges, and LESSEE agrees, to the extent that it may legally do so, that it will execute and deliver any instrument necessary or appropriate to confirm and grant or release any such easement, license, right-of-way or other right or privilege or any such agreement or other arrangement, upon receipt by LESSEE of (a) a copy of the instrument of grant or release or of the agreement or other arrangement, and (b) a written application signed by the LESSOR requesting execution and delivery of such instrument, provided that, such grant or release is not detrimental to the proper conduct of the business of LESSEE, and such grant or release will not impair the effective use or interfere with the efficient and economical operation of the facilities. LESSEE shall not request any payment or other consideration for such execution, the same being amply supported by the promises exchanged in this Agreement. Any payments or other consideration received by LESSOR for any such grant or with respect to or under any such agreement or other arrangement shall be and remain the property of LESSOR. The obligations of this Section shall survive termination of this Agreement.

#### **40. RULES AND REGULATIONS**

LESSEE, its agents and employees, shall be subject to any and all applicable rules, regulations, Airport Standard Operating Procedures, orders and restrictions which are now in force or which may hereafter be adopted by the Wichita Airport Authority or the City of Wichita, Kansas, in respect to the operation of the Airport; and shall also be subject to any and all applicable laws, statutes, rules, regulations or orders of any governmental authority, federal or state, lawfully exercising authority over the Colonel James Jabara Airport or LESSEE's operations conducted hereunder.

LESSOR shall not be liable to LESSEE for any diminution or deprivation of its rights hereunder on account of the exercise of any such authority as in this Section provided, nor shall LESSEE be entitled to terminate this Agreement by reason thereof unless exercise of such authority shall so interfere with LESSEE's exercise of the rights hereunder as to constitute a termination of this Agreement by operation of law in accordance with the laws of the State of Kansas, or as set out in Section 33, Cancellation By Lessee.

#### **41. MINIMUM STANDARDS FOR AERONAUTICAL ACTIVITIES**

LESSOR may, with due notice, from time-to-time, adopt and enforce reasonable Minimum Standards for Aeronautical Activities on the Airport, and amendments thereto, and the LESSEE agrees to observe and comply with the same. However, any minimum standards which may be developed and promulgated in the future and during the Initial Term of this Agreement shall not have the effect of imposing upon LESSEE the requirements of additional facilities, services or standards beyond that set forth in this Agreement.

#### **42. ENCROACHERS, TRESSPASSERS AND OTHER THIRD PARTY HAZARDS**

LESSEE shall lawfully remove, or cause to be removed by LESSOR or other official law enforcement agency, all encroachers, trespassers and other third parties violating laws of the federal, state or local government, or who are not on the Premises for legitimate purposes.



#### **43. FIRE EQUIPMENT AND SYSTEMS**

LESSEE shall furnish and maintain on the Premises sufficient smoke detectors, portable fire extinguishing equipment and sufficient fire suppression as maybe required by city code and insurance underwriters.

#### **44. ENVIRONMENTAL ASSESSMENT**

A “Phase-II” environmental site assessment, including soil and water testing, shall be conducted upon the Premise by an environmental consultant satisfactory to the LESSEE and LESSOR prior to the commencement of the construction, and the cost for such assessment shall be the LESSOR.

A “Phase I” and “Phase-II” environmental site assessment shall be conducted, at LESSEE’s sole expense, by an environmental consultant satisfactory to the LESSOR within ninety (90) days following the cancellation or termination of this Agreement, and a copy of these reports shall be promptly provided to the LESSOR. The environmental site assessment results shall be compared to the original background levels established at the commencement of this Agreement. If any contamination of the property has occurred through LESSEE’s fault or negligence, or the fault or negligence of a LESSEE supplier, agent or contractor, then LESSEE shall be required to re-establish background levels to the pre-existing levels, in a timely manner and acceptable to LESSOR.

Nothing in this Section shall be construed to hold LESSEE liable in any way for any environmental impact or release of Hazardous Substances affecting the Premises that occurs by reason of the mitigation, release, discharge or flow from other verifiable and documented off-site contamination sources that are not attributable to the LESSEE’s activity on the Premises. The burden of proof shall rest exclusively with the LESSEE to demonstrate that any such environmental impacts affecting the Premises are not attributable to the LESSEE’s activity on the Premises.

#### **45. ENVIRONMENTAL COVENANTS**

(a) The LESSEE hereby covenants that it will not cause or permit any Hazardous Substances to be placed, held, located, or disposed of, on, under or at the Premises, other than in the ordinary course of business and in compliance with all applicable laws.

(b) In furtherance and not in limitation of any indemnity elsewhere provided in this Agreement to the LESSOR, the LESSEE hereby agrees to indemnify and hold harmless the LESSOR and the City of Wichita from and against any and all losses, liabilities, including strict liability, damages, injuries, expenses, including reasonable attorneys' fees, costs of any settlement or judgment and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against, the LESSOR or the City of Wichita by any person or entity for or arising out of the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, discharging or release from the Premises during any term of this lease of any Substance (hazardous or otherwise) regulated by any applicable statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability, including strict liability, or standards of conduct concerning, any Hazardous Substance (including, without limitation, any losses, liabilities, reasonable attorneys' fees, costs of any settlement or judgment or claims asserted or arising under the Comprehensive Environmental Response, Compensation and Liability Act, any federal, state or local so-called "Superfund" or "Super lien" laws), if such presence, escape, seepage, leakage, spillage, discharge, emission was caused by the LESSEE, or persons within the control of the LESSEE, its officers, employees, agents, contractors, invitees and/or licensees, or if such Substance (hazardous or otherwise) was owned by, or located on the Premises by, the LESSEE (without regard to the actual cause of any escape, seepage, leakage, spillage, discharge, emission or release).

(c) If, during the term of this Agreement, the LESSEE receives any notice of (i) the happening of any event involving the use (other than in the ordinary course of business and in compliance with all applicable laws), spill, release, leak, seepage, discharge or cleanup of any Substance (hazardous or otherwise) on the Premises or in connection with the LESSEE's operations thereon or (ii) any complaint, order, citation or notice with regard to air emissions, water discharges, or any other environmental, health, or safety matter affecting the LESSEE from any persons or entity (including, without limitation, the United States Environmental Protection Agency (the "EPA") or the Kansas Department of Health and Environment ("KDHE")), the LESSEE shall immediately notify the LESSOR in writing of said notice.

(d) The LESSOR shall have the right, but not the obligation, and without limitation of the LESSOR's other rights under this Agreement, to enter the Premises or to take such other actions as deemed necessary or advisable to inspect, clean up, remove, resolve or minimize the impact of, or to otherwise deal with, any Substance (hazardous or otherwise) or environmental complaint following receipt of any notice from any person, including, without limitation, the EPA or KDHE, asserting the existence of any Substance (hazardous or otherwise) or an environmental

complaint pertaining to the Premises or any part thereof which, if true, could result in an order, suit or other action against the LESSEE and/or which, in the reasonable judgment of the LESSOR, could jeopardize its interests under this Agreement. If such conditions are caused by circumstances within the control of the LESSEE or if such circumstances result from a Substance (hazardous or otherwise) owned by, or located on the Premises by, the LESSEE (without regard to the actual cause of any escape, seepage, leakage, spillage, discharge, emission or release) all reasonable costs and expenses incurred by the LESSOR in the exercise of any such rights shall be payable by the LESSEE, within 15 days of written demand by Landlord.

(e) If an event of default shall have occurred and be continuing, the LESSEE at the request of the LESSOR shall periodically perform, at the LESSEE's expense, an environmental audit and, if reasonably deemed necessary by the LESSOR, an environmental risk assessment, of the Premises, or the hazardous waste management practices and/or hazardous waste disposal sites used by the LESSEE with respect to the Premises. Such audits and/or risk assessments shall be conducted by an environmental consultant satisfactory to the LESSOR, and all environmental audits and environmental risk assessments must be reasonable satisfactory to the LESSOR. Should the LESSEE fail to perform any such environmental audit or risk assessment within 90 days of the written request of the LESSOR, the LESSOR shall have the right, but not the obligation, to retain an environmental consultant to perform any such environmental audit or risk assessment. All costs and expenses incurred by the LESSOR in the exercise of such rights shall be payable by the LESSEE on demand.

(f) Neither LESSEE nor LESSOR shall install or permit to be installed in the Premises friable asbestos, electrical equipment containing polychlorinated biphenyls (PCBs), or any Substance containing asbestos and deemed hazardous by federal or state regulations applicable to the Premises and respecting such material. The LESSEE shall defend, indemnify, and save the LESSOR and the City of Wichita harmless from all costs and expenses (including consequential damages) asserted or proven against the LESSEE by any person, as a result of the presence of said Substances, and the costs of any removal or compliance with such regulations, if said Substance was installed by the LESSEE, or persons within its control.

(g) Subject to any limitations or restrictions imposed by the Kansas Budget Law or Cash Basis Law, the LESSOR hereby agrees to indemnify and hold harmless the LESSEE from and against any and all losses, liabilities, including strict liability, damages, injuries, expenses, including reasonable attorneys' fees, costs of any settlement or judgment and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against, the LESSEE by any person or entity for, arising out of, the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, discharging or release from the Premises during the term of this Agreement and the period prior to the term of this Agreement of any Substance (hazardous or otherwise) (including, without limitation, any losses, liabilities, reasonable attorneys' fees, costs of any settlement or judgment or claims asserted or arising under the Comprehensive Environmental Response, Compensation and Liability Act, any federal, state or local so-called

“Superfund” or “Super lien” laws, or any other applicable statute, law, ordinance, code, rule, regulation, order of decree regulating, relating to or imposing liability, including strict liability, or standards of conduct concerning any Hazardous Substance) unless such presence, escape, seepage, leakage, spillage, discharge, emission or release was caused by the LESSEE, or persons within the control of the LESSEE, its officers, employees, agents, invitees and/or licensees, or if such Substance (hazardous or otherwise) was owned by, or placed upon the Premises by, the LESSEE (without regard to the actual cause of any escape, seepage, leakage, spillage, discharge, emission or release except to the extent such was caused by the LESSOR).

Environmental compliance shall not be limited to those items noted within this lease but shall include any current or future federal, state, or local law, statute or regulation, that may be required of LESSEE’s operation (storage or use of Substances (hazardous or otherwise), activities of LESSEE’s employees or contracted vendor’s etc.). Tenant shall provide LESSOR upon request copies of any plan, training program, training records, material safety data sheet or any other documentation required by said laws.

(h) The provisions of this article shall survive the termination of this Agreement.

#### **46. IMPOSITIONS**

LESSEE shall, during the life of this Agreement, bear, pay and discharge, before the delinquency thereof, any and all impositions, including all lawful taxes and assessments imposed on the Premises, personal property thereon, or LESSEE’s possessory right therein. In the event any impositions may be lawfully paid in installments, LESSEE shall be required to pay only such installments thereof as become due and payable during the life of this Agreement as and when the same become due and payable. LESSOR covenants that without LESSEE’s written consent it will not, unless required by law, take any action intended to cause or induce the levying or assessment of any imposition (other than special assessments levied on account of special benefits or other impositions for benefits or services uniformly imposed) which LESSEE would be required to pay under this Section and that should any such levy or assessment be threatened or occur LESSOR shall, at LESSEE’s request, fully cooperate with LESSEE in all reasonable ways to prevent any such levy or assessment. Nothing herein contained shall prevent LESSEE from contesting the legality, validity, or application of any such tax or assessment to the full extent LESSEE may be lawfully entitled to do so.

#### **47. INDEMNITY**

Subject to Section 30, LESSEE, shall protect, defend and hold LESSOR and the City of Wichita and its officers, agents and employees completely harmless from and against any and all liabilities, losses, suits, claims, judgments, fines or demands arising by reason of injury or death of any person or damage to any property, including all reasonable costs for investigation and defense thereof (including but not limited to attorney fees, court cost and expert fees), of any nature whatsoever arising out of or incident to this Agreement and/or the use or occupancy of the Premises or the acts or omissions of LESSEE's officers, agents, employees, contractors, subcontractors, licensees or invitees, regardless of where the injury, death or damage may occur, except to the extent such injury, death or damage is caused by the negligence of LESSOR. The LESSOR shall give to LESSEE reasonable notice of any such claims or actions.

Subject to Section 30, LESSOR shall protect, defend and hold LESSEE, its officers, agents and employees completely harmless from and against all liabilities, losses, suits, claims, judgments, fines or demands arising by reason of injury to or death of any person or damage to any property, including all reasonable costs for investigation and defense thereof (including but not limited to attorney fees, court costs and expert fees), of any nature whatsoever arising out of or incident to this agreement and/or the use or occupancy of the Premises or the acts of omissions of LESSOR's officers, agents, employees, contractors, subcontractors, licensees or invitees, regardless of where the injury, death or damage may occur, except to the extent such injury, death or damage is caused by the negligence of LESSEE. The LESSEE shall give LESSOR reasonable notice of any such claims or actions.

The provisions of this Section shall survive the expiration or termination of this Agreement to the extent that they relate to liabilities, losses, suits, claims, judgments, fines or demands arising from or incident to events occurring during LESSEE'S occupancy of the Premises. The LESSEE shall use counsel reasonably acceptable to LESSOR in carrying out its obligations in this Section.

#### **48. DAMAGE OR DESTRUCTION**

In the event that facilities or improvements on the Premises are damaged or destroyed in whole or in part by fire, lightning or any other peril or other casualty during the term of this Agreement, this Agreement shall remain in full force and effect and LESSEE shall proceed with due diligence to repair, restore, rebuild or replace said damaged or destroyed property or parts thereof to as good a condition as all affected properties were in immediately prior to such damage or destruction, subject to such alterations as LESSEE may elect to make and are permitted in this Agreement. All proceeds from the insurance policies related to such damage or destruction shall be applied to cover the cost of such repairs or restoration.

In the event the improvements are damaged or destroyed in whole or in part by fire, lightning or any other peril or casualty not resulting in whole or in part from the actions of the LESSEE during the term of this Agreement, and such damage, destruction or loss exceeds fifty five percent (55%) of the value of the property as it existed prior to the casualty loss, LESSEE shall have the election, indicated by written notice given to LESSOR within 180 days after the occurrence of such event, not to repair, restore, rebuild or replace the improvements. Upon such election by LESSEE, this Agreement shall be terminated effective as of the date such notice is given by LESSEE, and neither party shall have any further rights or obligations pursuant to this Agreement other than LESSEE'S obligation to satisfy damages arising from any negligent or intentional action of itself, its employees, agents or invitees to the extent not covered by insurance proceeds. Any proceeds not required for such costs shall be distributed to the parties in pro-rata distributions as their interests may appear based upon Agreement term remaining and the fair market value of each party's interest at the time the proceeds are received. Where allowed by the insurance policy, insurance proceeds shall first be applied to removal of damaged improvements from the Premises before such distribution.

#### **49. CONDEMNATION**

If, during the term, title to, or the temporary use of, all or any part of the Premises shall be condemned by any authority exercising the power of eminent domain, LESSEE shall, within fifteen (15) days after the date of entry of a final order in any eminent domain proceedings granting condemnation, notify LESSOR in writing as to the nature and extent of such condemnation and whether it is practicable for LESSEE to acquire or construct substitute improvements, or whether LESSEE shall elect to terminate this lease.

If LESSEE shall determine that such substitution is practicable and desirable and LESSOR shall agree thereto, LESSEE shall forthwith proceed with and complete with reasonable dispatch the acquisition or construction of such substitute improvements. In such case, any net proceeds received from any award or awards with respect to the Premises or any part thereof made in such condemnation or eminent domain proceeds shall be used and applied for the purpose of paying the cost of such substitution. Any proceeds not required for such costs shall be distributed to the parties in pro-rata distributions as their interests may appear based upon Agreement term remaining and the fair market value of each party's interest at the time the proceeds are received.

If LESSEE shall determine that it is not practicable and desirable to acquire or construct substitute improvements, any net proceeds shall be distributed to the parties in pro-rata distributions as their interests may appear based upon the Agreement term remaining, and the fair market value of each party's interest at the time the proceeds are received.

LESSOR shall cooperate fully with LESSEE in the handling and conduct of any prospective or pending condemnation proceedings with respect to the Premises or any part thereof. In no event will LESSEE or LESSOR voluntarily settle or consent to the settlement of any prospective or pending condemnation proceedings with respect to the Premises without the mutual agreement and written consent of the other party to this Agreement.

#### **50. MODIFICATIONS FOR GRANTING FAA FUNDS**

In the event that the LESSOR determines the Federal Aviation Administration requirements call for modifications or changes to this Agreement as a condition precedent to granting of funds for the improvement of the Airport, these modifications or changes shall supersede this Agreement and LESSEE agrees to consent to such amendments, modifications, revisions, supplements or deletions of any of the terms, conditions or requirements of this Agreement as may be reasonably required by the LESSOR to fully comply with federal grant assurances and directives and to obtain Federal Aviation Administration grants-in-aid, provided that no such changes shall

materially alter the rights or obligations of LESSEE hereunder.

## **51. NONDISCRIMINATION**

The LESSEE agrees that it will not discriminate or permit discrimination against any person on the basis of race, color, sex, religion, disability, age (except where age is a bona fide occupational qualification), national origin or ancestry in its operations or services, and its use or occupancy of property under this Agreement. The LESSEE agrees to comply with all applicable provisions of federal and state laws, regulations, or executive orders prohibiting discriminatory conduct.

## **52. GENERAL PROVISIONS**

**Facility Development.** LESSOR reserves the right to further develop or improve the landing area or any other area, building or other improvement within the present or future boundaries of Airport as it sees fit in its sole judgment regardless of the desires or view of LESSEE and without interference or hindrance by LESSEE. Further, LESSOR retains the absolute right to maintain, repair, develop and expand or replace the terminal building, utilities, ramps, taxiways, runways, streets, roadways, sidewalks, any other airport facility, airport improvement or airport property free from any and all liability to LESSEE for loss of business or damage of any nature whatsoever as may be occasioned during or because of the performance of such maintenance, repair, development, expansion or replacement.

**Maintenance, Repair, Direction and Control.** LESSOR reserves the right, but is not obligated to exercise the right, to maintain and keep in repair the landing area of the Airport and all publicly owned facilities of the Airport, together with the right to direct and control all activities of LESSEE in this regard. These areas will include, but are not limited to, those areas which are necessary to serve the aeronautical users of the Airport, except that LESSOR will not be obligated to maintain and keep in repair such areas of the Airport as may be leased to or under the control of Airport tenants, whether such area serves aeronautical users or otherwise.

**Operation of Airport by the United States of America.** This Agreement and all the provisions hereof will be subject to whatever right the United States of America now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of said Airport or the exclusive or nonexclusive use of the Airport by the United States during the time of war or national emergency.



**14 CFR Part 77 of Federal Aviation Regulations.** LESSEE agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event future construction of a building, structure, or attachment thereto is planned for the Premises, or in the event of any planned modification or alteration of any present or future building or structure situated on the Premises. LESSEE by accepting this Agreement expressly agrees for itself, its successors and assigns, that it will not erect nor permit the erection of any structure or object, nor permit the growth of any tree on the Premises which will exceed such maximum height as may be stipulated by LESSOR. It is understood and agreed that applicable laws, codes, regulations or agreements concerning height restrictions will govern the maximum height to be stipulated by LESSOR. In the event the aforesaid covenants are breached, LESSOR reserves the right to enter upon the Premises and to remove the offending structure or object, and cut down the offending tree, all of which will be at the expense of LESSEE and without liability to LESSOR.

**Airspace.** There is hereby reserved to LESSOR, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Premises. This public right of flight will include the right to cause or allow in said airspace, any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from or operation on the Airport. No liability on the part of LESSOR will result from the exercise of this right.

**Easement for Flight.** LESSEE releases LESSOR from any present or future liability whatsoever and covenants not to sue LESSOR for damages or any other relief based directly or indirectly upon noise, light, vibrations, smoke, fumes, odors, air currents, electronic or other emissions occurring as a result of aviation or airport related operations at or otherwise associated with the Airport. This release and covenant includes but is not limited to claims for damages for physical or emotional injuries, discomfort, inconvenience, property damage, death, interference with use and enjoyment of property, nuisance, or inverse condemnation or for injunctive or other extraordinary or equitable relief. It is further agreed that LESSOR shall have no duty to avoid or mitigate such damages by, without limitation, setting aside or condemning buffer lands, rerouting air traffic, erecting sound or other barriers, establishing curfews, noise or other regulations, relocating airport facilities or operations or taking other measures, except to the extent, if any, that such actions are validly required by government authority. LESSOR reserves these rights from the Premises an easement for flight of aircraft in or adjacent to the airspace above the Premises and for the existence and imposition over, on and upon said Premises of noise, light, vibrations, smoke, fumes, odors, air currents, electronic or other emissions, discomfort, inconvenience, interference with use and enjoyment, and any consequent reduction in market value which may occur directly or indirectly as a result of aviation, airport or airport-related

operations at or otherwise associated with use of the Airport. LESSEE accepts the Premises subject to the risks and activities hereinabove described.

**Airport Hazards.** LESSEE by accepting this Agreement agrees for itself, its successors and assignees, that it will not make use of the leased Premises in any manner which might interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard. In the event this Agreement term is breached, LESSOR reserves the right to enter upon the Premises and cause the abatement of such interference at the expense of LESSEE without liability to LESSOR of any kind.

**Airport Rules and Regulations, Policies, and Standard Operating Procedures.** LESSOR will have the right to adopt, amend and enforce reasonable airport rules and regulations, policies and standard operating procedures with respect to use of and the conduct and operation of the Airport, its buildings and facilities or any improvements within the present or future boundaries of the Airport, which LESSEE agrees to observe and obey.

**Federal Aviation Administration Requirements.** LESSOR and LESSEE agree that the requirements of the Federal Aviation Administration (FAA) set out below are approved by both parties, and if applicable, LESSEE agrees to comply with all FAA requirements with respect to its operations, use of the Airport and this Agreement:

(a) The LESSEE, for itself and its representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained or otherwise operated on said property described in this Agreement for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the LESSEE shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

(b) The LESSEE, for itself and its representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the LESSEE shall use the Premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be

amended.

(c) The LESSEE assures that it will undertake an affirmative action program if required by 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. The LESSEE assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. The LESSEE assures that it will require that its covered suborganizations provide assurances to the LESSEE that they similarly will undertake affirmative action programs, and that they will require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

(d) It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308 of the Federal Aviation Act of 1958.

(e) LESSEE agrees to furnish service on a fair, equal and not unjustly discriminatory basis to all users thereof, and to charge fair, reasonable and not unjustly discriminatory prices for each unit or service; PROVIDED, that LESSEE may make reasonable and nondiscriminatory discounts, rebates or other similar types of price reductions to volume purchasers.

(f) LESSOR reserves the right (but shall not be obligated to LESSEE) to maintain and keep in repair the landing area of the airport and all publicly-owned facilities of the airport, together with the right to direct and control all activities of LESSEE in this regard.

(g) LESSOR reserves the right further to develop or improve the landing area and all publicly-owned air navigation facilities of the airport as it sees fit, regardless of the desires or views of LESSEE, and without interference or hindrance.

(h) LESSOR reserves the right to take any action it considers necessary to protect the aerial approaches of the airport against obstruction, together with the right to prevent LESSEE from erecting, or permitting to be erected, any building or other structure on the airport which, in the opinion of LESSOR, would limit the usefulness of the airport or constitute a hazard to aircraft.

(i) During time of war or national emergency LESSOR shall have the right to enter into an agreement with the United States Government for military or naval use of part or all of the landing area, the publicly-owned air navigation facilities and/or other areas or facilities of the airport. If any such agreement is executed, the provisions of this instrument, insofar as they are inconsistent with the provisions of the agreement with the Government, shall be suspended.

(j) It is understood and agreed that the rights granted by this agreement will not be exercised in such a way as to interfere with or adversely affect the use, operation, maintenance or development of the airport.

(k) There is hereby reserved to LESSOR, its successors and assigns, for the use and benefit of the public, a free and unrestricted right of flight for the passage of aircraft in the air space above the surface of the Premises herein conveyed, together with the right to cause in said

airspace such noise as may be inherent in the operation of aircraft now known or hereafter used for navigation of or flight in the air, using said airspace or landing at, taking off from or operating on or about the airport.

(l) This Agreement shall become subordinate to provisions of any existing or future agreement between the LESSOR and the United States of America or any agency thereof relative to the operation, development or maintenance of the airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport.

**Subordination to Agreements with the U.S. Government.** This Agreement is subject and subordinate to the provisions of any agreements heretofore or hereafter made between LESSOR and the United States Government relative to the operation or maintenance of Airport, the execution of which has been required as a condition precedent to the transfer of federal rights or property to LESSOR for Airport purposes, or the expenditure of federal funds for the improvement or development of Airport, including the expenditure of federal funds for the development of Airport in accordance with the provisions of the Federal Aviation Act of 1958, as it has been amended from time to time. LESSOR covenants that it has no existing agreements with the United States Government in conflict with the express provisions hereof.

**Non-Waiver of Rights.** No waiver or default by either party of any of the terms, warranties, covenants and conditions hereof to be performed, kept and observed by the other party shall be construed as, or shall operate as, a waiver of any subsequent default of any of the terms, warranties, covenants or conditions herein contained, to be performed, kept and observed by the other party.

**Notices.** Notices required herein may be given by registered, certified, or express mail, and shall be deemed served on the date such notice is deposited in the United States Mail, or by prepaid private courier in the continental United States. Either party shall have the right, by giving written notice to the other, to change the address at which its notices are to be received.

Until any such change is made, notices to LESSOR shall be delivered as follows:

Wichita Airport Authority  
Wichita Mid-Continent Airport  
2173 Air Cargo Road  
Wichita, Kansas 67209

Until any such change is made, notices to LESSEE shall be delivered as follows:

Mann Aviation, LLC  
3260 Jabara Rd.,  
Wichita, Kansas 67226

*With a copy of notice to:*

Edward P. Dunn, Jr.  
Koch Siedhoff Hand & Dunn, LLP  
3580 W. 13<sup>th</sup>  
Wichita, Kansas 67203-4591

**Captions.** The captions/headings of the Sections of this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope or intent of any provisions of this Agreement, and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

**Severability and Invalid Provisions.** In the event any term, covenant, condition or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of any such term, covenant, condition or provision shall in no way affect any other term, covenant, condition or provision herein contained; provided, however, that the invalidity of any such term, covenant, condition or provision does not materially prejudice either the LESSOR or the LESSEE in their respective rights and obligations contained in the valid terms, covenants, conditions or provisions in this agreement.

**Waiver of Claims.** LESSEE hereby waives any claim against LESSOR and its officers or employees for loss of anticipated profits, consequential or incidental damages, or claim for attorney fees caused by or resulting any suit or proceedings directly or indirectly attacking the validity of Agreement or any part thereof, or the manner in which it is executed or performed, or by any judgment or award in any legal proceeding declaring this Agreement null, void or voidable, or delaying the same of any part thereof, from being carried out. This waiver extends to all claims, whether the supporting legal theory lies in common law or has a statutory basis.

**Incorporation of Exhibits.** All exhibits referred to in this Agreement are intended to be and are hereby specifically made a part of this Agreement.

**Incorporation of Required Provisions.** The parties incorporate in this Agreement by this reference all provisions lawfully required to be contained herein by any governmental body or agency.

**Non-Liability of Agents and Employees.** No member, officer, agent or employee of either party to this Agreement shall be charged personally, or held contractually liable by or to the other party under the terms or provisions of this Agreement, or because of any breach thereof or because of its or their execution or attempted execution.

**Successors and Assigns Bound.** This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto where permitted by this Agreement.

**Time of Essence.** Time is of the essence in this Agreement.

**Relationship of the Parties.** It is understood LESSEE is not in any way or for any purpose a partner or joint venturer with or an agent of LESSOR. LESSEE shall act as an independent contractor in the performance of its duties pursuant to this Agreement.

**Interpretation.** LESSOR and LESSEE hereby agree that this Agreement shall not be construed or interpreted in favor of either party on the basis of preparation.

**Kansas Laws to Govern.** This Agreement and the terms and conditions herein contained shall at all times be governed, interpreted and construed under and in accordance with the laws of the State of Kansas, and venue for resolution of any issue pertaining to this Agreement shall be in Sedgwick County, Kansas.

### **53. THIRD PARTY RIGHTS**

It is agreed between the parties that it is not intended by any of the provisions of this Agreement to create for the public or any member thereof the status of a third-party beneficiary, or to authorize anyone not a party to this Agreement to maintain a suit for damages pursuant to the terms or provisions of this Agreement.

### **54. QUIET ENJOYMENT**

LESSOR agrees that, on payment of the rentals and fees and performance of the terms, covenants, conditions and agreements on the part of LESSEE to be performed in this Agreement, LESSEE will have the right to peaceably occupy and enjoy the Premises, subject however, to the GENERAL PROVISIONS contained in Section 52.

## **55. HOLD OVER**

In the event LESSEE holds over the lease of the Premises, any rights granted after expiration of this Agreement without any written renewal of it shall not be deemed to operate as a renewal or extension of this Agreement, but shall only create a month-to-month arrangement, which may be terminated within thirty (30) days notice by LESSOR or LESSEE.

## **56. SURRENDER OF POSSESSION AND RESTORATION**

LESSEE shall yield and deliver to LESSOR possession of the Premises at the expiration or termination of this Agreement in good condition in accordance with LESSEE's obligations in this Agreement, except for reasonable wear and tear, or fire or other casualty for which full insurance compensation has been paid as agreed. LESSEE shall, at its expense, deliver the Premises in good order and condition, including: (1) cleaning and hauling away all supplies and trash; (2) removing by legal means all materials and Substances classified as hazardous; (3) leaving in operating condition all bulbs and ballasts; (4) replacing all broken glass, (5) remove all computer network cable, and (6) return to LESSOR all keys to all doors and gates.

LESSEE, at LESSEE's expense, shall remove during the Term of the Agreement or at its expiration all non-attached equipment and personal property placed by LESSEE on or about the Premises herein leased, subject to LESSEE's repairing any damage thereto caused by such removal and subject to any valid lien which LESSOR may have on that property for unpaid rents, expenses or fees.

In the event LESSEE does not remove all of its equipment and personal property within thirty (30) calendar days after the termination of this Agreement, any remaining property shall be considered abandoned and LESSOR may dispose of said property without any further responsibility or liability to LESSEE. The net disposal costs of such property shall be the financial obligation of LESSEE.

## **57. INTENTION OF PARTIES**

This Agreement is intended solely for the benefit of LESSOR and LESSEE and is not intended to benefit, either directly or indirectly, any third party or member(s) of the public at large. Any work done or inspection of the Premises performed by LESSOR is solely for the benefit of LESSOR and LESSEE.

Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint ventures, or any other similar such relationship, between the parties hereto. Further, non-parties to this Agreement may not maintain a suit for personal injuries or property damage pursuant to the terms or provisions of the Agreement. The parties shall understand and agree that neither the method of payment, nor any other provision contained herein, nor any act(s) of the parties hereto creates a relationship other than the relationship of the LESSOR and the LESSEE.

## **58. ENTIRE AGREEMENT**

The parties understand and agree that this instrument contains the entire Agreement between them. The parties hereto further understand and agree that the other party and its agents have made no representations or promises with respect to the Agreement or the making or entry into this Agreement, except as expressed in this Agreement, and that no claim or liability or cause for termination shall be asserted by either party against the other and such party shall not be liable by reason of, the making of any representations or promises not expressly stated in this Agreement, any other written or oral agreement with the other being expressly waived.

The individuals executing this Agreement personally warrant that they have full authority to execute this Agreement on behalf of the entity for which they are acting herein.

The parties hereto acknowledge that they have thoroughly read this Agreement, including any exhibits or attachments hereto, and have sought and received whatever competent advice and counsel deemed necessary for them to form a full and complete understanding of all rights and obligations herein.



## **59. AMENDMENT**

This Agreement constitutes the entire Agreement between the parties for the lease of Premises set forth and identified under Section 1. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless the same is in writing, dated subsequent to the date hereof, and duly executed by the parties hereto.

## **60. APPROVAL, CONSENT, DIRECTION OR DESIGNATION BY LESSOR**

Wherever under this Agreement, approvals, consents, directions, or designations are required or permitted, such approvals, consents, directions, or designations required or permitted under this Agreement shall be performed by the Director of Airports, or his/her authorized representative. Approvals, consents, directions, or designations made at any time by the Director of Airports, and from time to time, may be withdrawn or modified by notice from LESSOR to LESSEE.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

ATTEST:

THE WICHITA AIRPORT AUTHORITY  
WICHITA, KANSAS

By \_\_\_\_\_  
Karen Sublett, City Clerk

By \_\_\_\_\_  
Carl Brewer, President  
"LESSOR"

By \_\_\_\_\_  
Victor D. White, Director of Airports

ATTEST:

MANN AVIATION LLC

By \_\_\_\_\_

By \_\_\_\_\_  
(Name and Title)  
"LESSEE"

APPROVED AS TO FORM: \_\_\_\_\_ Date: \_\_\_\_\_  
Director of Law

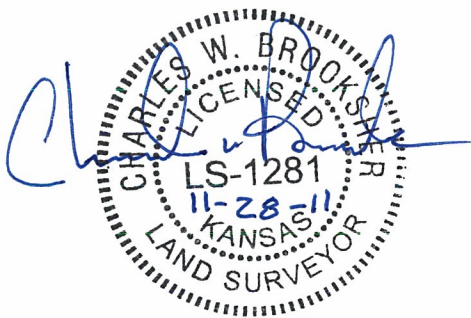
November 28, 2011

Lease Description  
Mann Aviation Hangar at Jabara Airport

A Tract of land located in Lot 1, Block A, Colonel James Jabara Airport an Addition to Sedgwick County, Kansas.

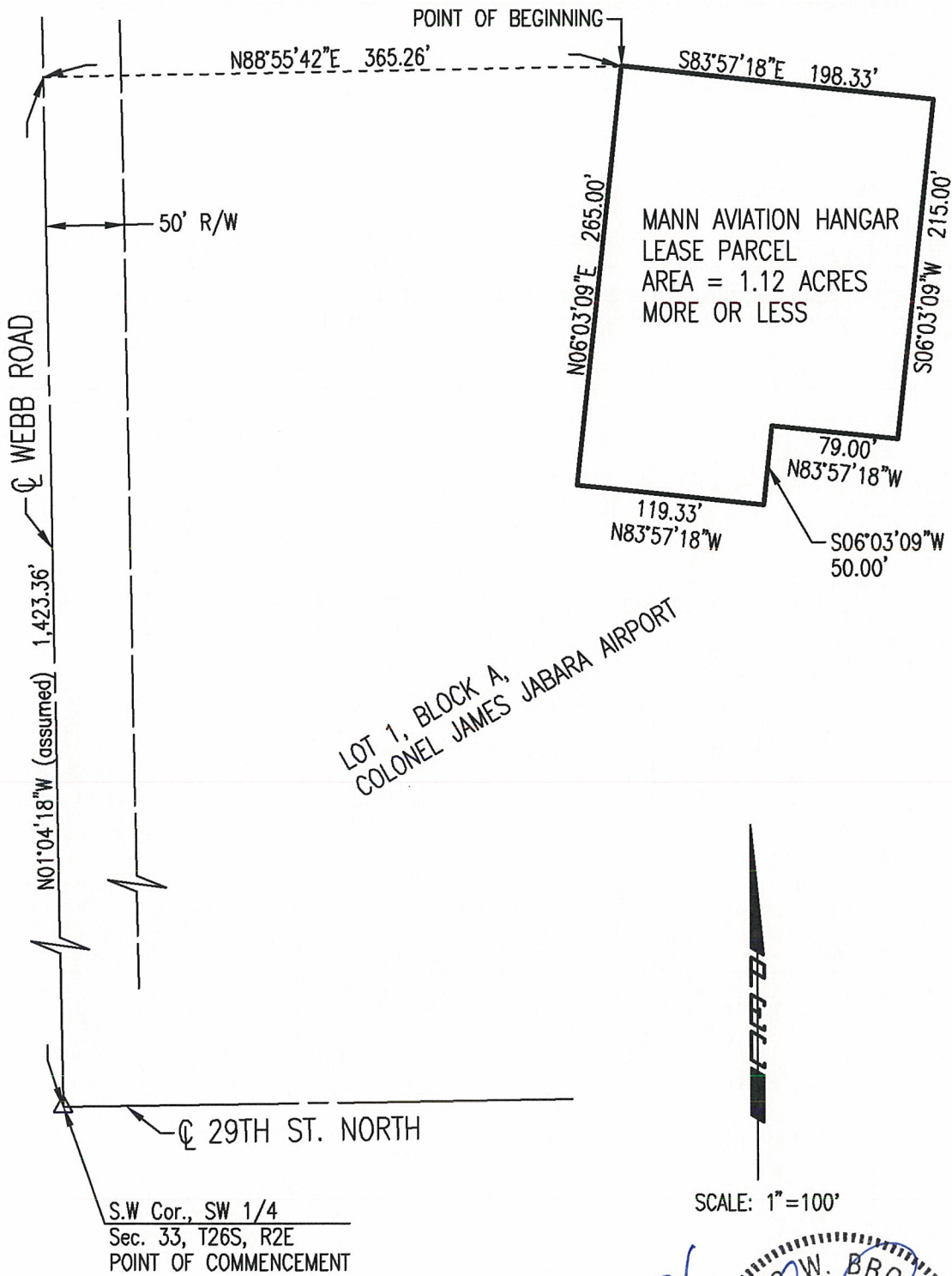
Commencing at the Southwest corner of the Southwest Quarter of Section 33, Township 26 South, Range 2 East of the Sixth Principal Meridian, Sedgwick County, Kansas; thence on an assumed bearing of N01°04'18"W along the West line of said Southwest Quarter, a distance of 1,423.36 feet; thence bearing N88°55'42"E, a distance of 365.26 feet to the Point of Beginning of the lease parcel; thence bearing S83°57'18"E, a distance of 198.33 feet; thence bearing S06°03'09"W, a distance of 215.00 feet; thence bearing N83°57'18"W, a distance of 79.00 feet; thence bearing S06°03'09"W, a distance of 50.00 feet; thence bearing N83°57'18"W, a distance of 119.33 feet; thence bearing N6°03'09"E; a distance of 265.00 feet to the Point of Beginning.

Containing 48,608 square feet or 1.12 acres more or less.

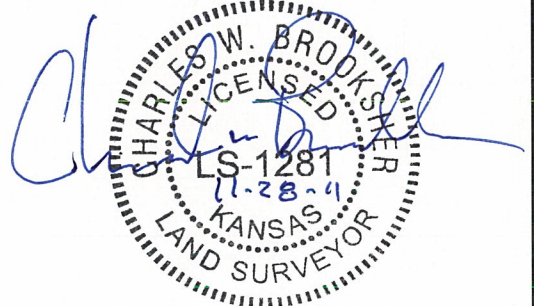


Prepared by Charles W Brooksher LS #1281  
PEC Project No. 60X-11473

Saved 11-28-2011 2:50:07 PM by JTS  
 Plot Scale 1:100 11-28-2011 3:00:42 PM by JTS  
 Q:\2011\11473\11473-Mann Aviation Hangar Lease



SCALE: 1"=100'



CHARLES W. BROOKSHER, L.S. NO. 1281  
 PROFESSIONAL ENGINEERING CONSULTANTS, P.A.

11-28-11  
 DATE

## EXHIBIT C

LESSOR shall be responsible for the following construction-related items as part of the Agreement with LESSEE:

- 1a. Permanent access road adjacent to leasehold.
- 1b. Temporary construction road (removed after airfield pavement construction).
2. Temporary access gates in security fence.
3. Taxiway approach to lease line from Taxiway A-6 (the approach LESSEE's airplane will take to get to the taxiway and runway).
4. Security fence installation up to the eastside of construction road. (LESSOR shall determine the location of the security fence).
5. Mass grade for hangar and apron to elevation as shown on Airport Project.
6. Stockpile location for cut materials (this material will be available on the airport and can be used by LESSEE for landscaping, including berm).
7. Water and sewer lines from city mains installed in road corridor adjacent to leasehold.
8. Empty conduit (pathway) provided for underground electrical power (No power cable or transformer) to lease line.
9. Empty conduit (pathway) provided for communications. Service companies shall install cabling and/or wires to lease line.
10. Gas main line installed in road corridor adjacent to leasehold.
11. Storm water detention.
12. Drainage ditching from lease to detention pond.
13. Environmental Studies – Phase I & II.

City of Wichita  
City Council Meeting  
May 15, 2012

**TO:** Wichita Airport Authority

**SUBJECT:** EagleMed, LLC  
Lease Agreement for use of 2163 Air Cargo Road Units G and H  
Wichita Mid-Continent Airport

**INITIATED BY:** Department of Airports

**AGENDA:** Wichita Airport Authority (Consent)

---

**Recommendation:** Approve the Agreement.

**Background:** In December 1998, the Wichita Airport Authority (WAA) entered into a land lease agreement with Ballard Aviation, Inc. for the purpose of constructing a facility at 6601 Pueblo Road to be used for the provision of public air charter services, including air ambulance services. On August 18, 2009, the WAA approved an assignment of the lease from Ballard Aviation to EagleMed, LLC (EagleMed), a subsidiary limited liability company of Ballard, followed by the acquisition of all of the membership interests of EagleMed by Air Medical Group Holdings, Inc. (AMGH). AMGH is the largest independent provider of emergency air medical transportation services in the United States.

**Analysis:** Due to its growth, EagleMed is now desirous of leasing 2,426 sq. ft. of space at 2163 Air Cargo Road, Units G and H, on Mid-Continent Airport. The initial term of the lease is two (2) years expiring April 30, 2014, with three one-year option terms with the last term expiring April 30, 2017.

**Financial Considerations:** The facility rental for the initial term and the three (3) option terms is \$4.95 per sq. ft. for the use of Unit G, which includes electrical power. The facility rental for the initial term and the three (3) option terms is \$3.11 per sq. ft. for the use of Unit H. This will result in new annual revenue to the WAA of \$9,777 for use of the Units G and H.

**Goal Impact:** The Airport's contribution to the Economic Vitality and Quality of Life of Wichita is promoted through negotiating agreements which allow the Airport system's business partners to continue operations on the Airport, which generate rental income for the WAA and allows the Airport to continue its operation on a self-sustaining basis.

**Legal Considerations:** The Agreement has been approved as to form by the Law Department.

**Recommendations/Actions:** It is recommended that the Wichita Airport Authority approve the Agreement and authorize the necessary signatures.

**Attachments:** Agreement.

AGREEMENT

By and Between

WICHITA AIRPORT AUTHORITY  
Wichita, Kansas

and

EagleMed, LLC

for

Use of Facility – 2163 Air Cargo Road  
Units G and H  
Wichita Mid-Continent Airport  
Wichita, Kansas

THIS AGREEMENT is entered into this May 15, 2012, between THE WICHITA AIRPORT AUTHORITY, Wichita, Kansas (LESSOR) and EAGLEMED, LLC., (LESSEE).

WHEREAS, LESSOR is a governmental or quasi-governmental entity authorized under the laws of the State of Kansas to own and operate one or more airports, with full, lawful power and authority to enter into binding legal instruments by and through its governing body; and

WHEREAS, LESSOR owns, operates, regulates, administers, and maintains the campus of Wichita Mid-Continent Airport (Airport); and

WHEREAS, LESSEE is an entity authorized to operate in the State of Kansas that desires to lease real property commonly known as 2163 Air Cargo Road, Units G and H, Wichita, Kansas, the office space defined below (Premises) on the campus of Wichita Mid-Continent Airport (Airport) from LESSOR under the terms and conditions set forth below in this Use and Lease Agreement (Agreement).

NOW, THEREFORE, in consideration of the mutual promises and agreements herein set forth, LESSOR and LESSEE do hereby covenant and agree as follows:

## **1. PREMISES**

LESSOR does hereby lease to LESSEE a designated area of the Premises located at 2163 Air Cargo Road, Units G and H, on Wichita Mid-Continent Airport, consisting of 2,426 square feet, all referred to herein as the Premises, as outlined on Exhibit "A", attached hereto and made a part hereof.

## **2. INITIAL TERM**

The Term of this Agreement shall commence on May 1, 2012, and shall continue for a period of two (2) years ("Initial Term"), with the Initial Term expiring on April 30, 2014, unless otherwise terminated under provisions agreed to herein.

## **3. OPTION TERM**

This Agreement may be renewed for three (3), one-year periods ("Option Term"), with the last Option Term expiring on April 30, 2017, provided LESSEE is not in default hereunder beyond any applicable grace or cure periods in rental or other payments to LESSOR at the time such notice exercising the Option Term is given. If LESSEE chooses to exercise its option to renew, written notice shall be submitted to LESSOR no less than ninety (90) days prior to the expiration of the Initial Term. If LESSEE chooses to relocate and lease other property owned by the LESSOR through use of a Replacement Lease Agreement, then the LESSEE shall have the right to cancel this Agreement during any of the Option Terms by providing a ninety-day (90) written notice after the execution of the Replacement Lease Agreement. If LESSEE is in default of any obligation under this Agreement beyond the time periods expressly allowed in this Section, then any notice attempting to exercise the Option Term shall be void.

## **4. DEPOSIT**

LESSOR shall have the option at any time to request a security deposit equal to one month's payment. This security deposit shall be retained by the LESSOR during the term hereof as security for the full, faithful performance of and compliance with, on the part of the LESSOR, all of the provisions, terms and conditions of this Agreement. Said security deposit shall be returned to Lessee upon expiration or termination of this Agreement less any moneys due the LESSOR.



## **5. FACILITY RENT DURING INITIAL TERM**

The parties hereby agree that the Facility Rent of the Initial Term and for the three (3) contemplated option terms, effective May 1, 2012, shall be set at \$4.95 per square foot for Unit G as outlined in Exhibit "A". This rental will result in an annual payment of \$6,004.35, payable in monthly installments of \$500.36.

The Facility Rent of the Initial Term and for the three (3) contemplated option terms, effective May 1, 2012, shall be set at \$3.11 per square foot for Unit H as outlined in Exhibit "A". This rental will result in an annual payment of \$3,772.43, payable in monthly installments of \$314.37.

## **6. OTHER FEES AND CHARGES**

It is understood and agreed by LESSEE that LESSOR may assess fees and charges to LESSEE according to rates established by LESSOR's Schedule of Fees and Charges. Such Schedule shall be amended from time to time by action of the LESSOR.

Any amounts due LESSOR from LESSEE for utility, maintenance, reimbursements, or other special charges will be paid by LESSEE within thirty (30) days of the date of the invoice.

## **7. PAYMENTS**

LESSEE shall make all payments to the Wichita Airport Authority, and in a form acceptable to LESSOR. Payments made by check and reports shall be delivered or mailed to:

Wichita Airport Authority  
2173 Air Cargo Road  
Wichita, Kansas 67209

or such other address as designated in writing.

LESSEE shall pay to LESSOR in advance on the first day of each month, without demand or invoicing, facility rental for the Premises as set forth herein. In the event LESSEE fails to make payment within ten (10) days of the dates due as set forth in this Section, then LESSOR may charge LESSEE a monthly service charge of twelve percent (12%) on an annual basis for any such overdue amount, plus reasonable attorneys' and administrative fees incurred by LESSOR in attempting to obtain payment.

## **8. LESSEE'S IDENTITY**

LESSEE must be a natural person or an entity, firm, company, corporation, partnership or a joint venture which has substance under State of Kansas Law and a specific legal identity and business purpose as registered with the Secretary of State in the LESSEE's state of business residence.

## **9. PERMITTED USE OF PREMISES**

LESSEE shall have the right of ingress and egress, in common with others for the benefit of its employees, invitees, contractors, agents and representatives, to be exercised in a reasonable manner. This right of ingress and egress is granted for activities incidental or related to LESSEE'S approved activities, and for no other purposes except as may be approved in writing by LESSOR. This right is subject to federal, state and local security and safety requirements and standards. As required by Kansas state statute, it is understood and agreed that the Premises shall be used and occupied for aviation purposes or purposes incidental or related thereto and the primary purpose shall be for the operation of public air charter services.

LESSEE recognizes that other tenants now and hereafter may occupy other portions of the Airport, and that such other tenants shall have the right in common with LESSEE to use public roadways, streets, ramps, taxiways, runways, access gates, lighting, beacons, navigational aids, or other conveniences for aeronautical operations, and these common facilities are not under an exclusive use lease; and LESSEE shall conduct its operations in such a manner as to not impede access by others to these common facilities, nor in any other way interfere with, nor disrupt the business of other tenants or the quiet enjoyment of their leasehold interests at the Airport.

LESSOR reserves the right to grant and/or permit other parties the right to use any portion of the Airport, except that described in Section 1, Premises, for any permitted purpose, and upon any fair and non-discriminatory terms established by the LESSOR.

LESSEE, its affiliated entities, subsidiaries, employees, agents, representatives, contractors, and subcontractors, will not transact or otherwise engage in any other activities, business, and/or services on or from the Premises, except as described in this Agreement, unless such is provided for by a separate written approval, or amendment to this Agreement, and subject to approval by LESSOR.

The parties acknowledge that this lease is for office space, and does not include airfield access.

## **10. PROHIBITED USE OF PREMISES**

The Premises shall not be used for any purpose not expressly authorized in Section 9, Permitted Use of Premises. The following operations, services and concessions shall be specifically prohibited on or from the Premises or any other location at the Airport:

- (a) Commercial catering, restaurant and/or lounge concessions;
- (b) Commercial (for hire) ground transportation;
- (c) Commercial “paid” parking;
- (d) Commercial hotel or lodging;
- (e) Commercial outdoor advertising;
- (f) Sale of non-aviation products and services;
- (g) Revenue-producing communication systems or systems not directly applicable to LESSEE’s operations on the Premises;
- (h) Automobile rental service;
- (i) Any activity considered by LESSOR to not be aviation purposes or purposes incidental or related thereto.

## **11. LESSEE’S RIGHTS AND PRIVILEGES**

LESSEE shall have the following rights and privileges on the Premises and on the Airport:

- (a) The rights to install, operate, repair, and store upon the Premises all personal property and fixtures necessary for the conduct of LESSEE’s lawful business.
- (b) The right of ingress and egress to and from the Premises, which rights shall extend to LESSEE’s invitees, contractors, subcontractors, agents, representatives and employees; subject, however, to all reasonable security regulations;
- (c) The right in common with others authorized to do so, to use the common areas of the Airport.

## 12. LESSOR'S RIGHTS AND PRIVILEGES

LESSOR expressly reserves from the Premises:

- (a) Mineral Rights. All gas, oil and mineral rights in and under the soil.
- (b) Water Rights. All statutory, exempt, vested, and granted appropriation rights for the use of water, and all rights to request further appropriations for the Premises.
- (c) Airspace. A public right of flight through the airspace above the surface of the Premises. This public right of flight will include the right to cause or allow in said airspace, any noise inherent in the operation of any aircraft used for navigation or flight through said airspace or landing at, taking off from, or operation on the Airport. No liability on the part of LESSOR or any Tenant will result from the exercise of this right.
- (d) Navigational Aids. The right to install, maintain and modify and/or permit others to install, maintain and modify on the Premises visual and electronic navigational aids.
- (e) Entry and Inspection of Premises. The right of LESSOR, its authorized officers, employees, agents, contractors, subcontractors, authorized government agents, or other representatives to enter upon the Premises:
  - (1) To inspect at reasonable intervals during regular business hours upon reasonable prior notice (or any time in case of emergency or lawful investigation) to determine whether LESSEE has complied, and is complying with the terms and conditions of this Agreement;
  - (2) To inspect, during regular business hours upon reasonable prior notice, Premises, facilities, and equipment for compliance with laws, regulations and/or codes of the federal, state or local government, airport rules and regulations and airport standard operating procedures; and
  - (3) To construct or erect new facilities, or to perform maintenance, repair, or replacement relating to the Premises or any facility thereon, as may be required and necessary, but LESSOR shall not be obligated to exercise this option.
- (f) Radio/Wireless Communication Systems. The right to approve or withhold approval of any use of fixed RF Systems for the transmission of radio frequency signals in/on the Premises.
- (g) General Provisions. The right to exercise any and all rights set out in Section 41, General Provisions.
- (h) Signage. The right to enter onto the premises for installation, and the right to install any signage on the Premises required by law, order, rule, regulation, Airport Security Program or federal directive.

Provided that exercise by LESSOR of any such reserved rights (a) through (h) shall be without expense to the LESSEE and shall not unreasonably or materially interfere with LESSEE's use of

the Premises and shall not delay LESSEE in the exercise of its rights or the performance of its duties hereunder or increase the costs of such performance.

### **13. NON-INTERFERENCE WITH AIRPORT OPERATIONS**

LESSEE covenants and agrees that it shall not allow any condition on the Premises, nor permit the conduct of any activity on such Premises, which shall materially or adversely affect the development, improvement, operation, or maintenance of the Airport or its facilities, nor shall LESSEE use or permit the Premises to be used in any manner which might interfere with the landing and take-off of aircraft from the Airport or otherwise constitute a hazard to the general public, or to LESSOR's tenants or the customers, agents, invitees, contractors, representatives and employees of those tenants.

LESSEE covenants and agrees that it shall not allow any condition on the Premises, nor permit the conduct of any activity on such Premises, which shall materially or adversely affect, infringe upon, block or interrupt the operations and business activity of other airport tenant leaseholds.

### **14. COOPERATION WITH AIRPORT DEVELOPMENT**

LESSEE understands and agrees that LESSOR may pursue Airport development, improvements and maintenance activities from time-to-time that may affect the Premises and other areas of the Airport. LESSEE agrees to work cooperatively and in good faith with the LESSOR and other tenants and contractors in development, improvement and maintenance activities to minimize any disruptions. If requested by the LESSOR, LESSEE shall cooperate with and assist the LESSOR to the greatest extent possible in the development and implementation of any plans, designs, ingress/egress, or transition that may arise in connection with such Airport development, improvement, and maintenance activities. LESSOR may temporarily or permanently close, re-route, or consent to the closing or re-routing of any method of ingress or egress on the Airport, so long as the means of ingress and egress are reasonably equivalent to current access available to LESSEE. LESSOR may temporarily close the runway, taxiways, ramps or portions thereof for purposes of maintenance, replacement, re-construction or expansion. Provided that exercise by LESSOR of any such Airport development, improvement, or maintenance shall be without expense to the LESSEE and shall not unreasonably or materially interfere with LESSEE's use of the Premises, and shall not delay LESSEE in the exercise of its rights or the performance of its duties hereunder or increase the costs of such performance.

## **15. TITLE TO FACILITIES, IMPROVEMENTS AND FIXTURES**

It is understood and agreed that title to the Premises and to all existing and future structures, facilities, improvements and fixtures shall be, and shall remain, exclusively with LESSOR, the Wichita Airport Authority.

LESSEE shall, without cost to LESSOR, furnish and install all non-attached furniture, movable partitions, decorations, accessories, equipment, and tools necessary to conduct its business, which shall retain status as personal property even though temporarily affixed to the Premises. Title/ownership to non-attached personal property shall remain with LESSEE.

The term "fixtures", whenever used in this Agreement, shall be construed to include all structures and fixed systems and equipment erected or installed upon the Premises, all fencing, grading and pavement, all underground wires, cables, pipes, conduits, tanks, drains and drainages; and all other property of every kind and nature which is permanently affixed to the Premises, except LESSEE's personal property.

All facilities, structures and improvements, and alterations and additions to the Premises, excluding personal property of LESSEE, placed at the expense of LESSEE, shall remain upon and be surrendered with the Premises as a part thereof, on any termination of this Agreement, for any cause, and shall remain the property of the LESSOR.

## **16. LIENS**

LESSEE shall take or cause to be taken all steps that are required or permitted by law in order to avoid the imposition of any lien upon the Premises or any improvements thereon. Should any lien be placed on the Premises or any improvements thereon, LESSEE shall cause to be removed any and all liens of any nature. This obligation includes, but is not limited to, tax liens and liens arising out of or because of any financing, construction or installation performed by or on behalf of LESSEE or any of its contractors or subcontractors upon LESSEE's Premises or arising out of or because of the performance of any work or labor to it or them at said Premises or the furnishing of any materials to it or them for use at said Premises. Should any such lien be made or filed, LESSEE shall bond against or discharge the same within thirty (30) days after actual notice of the same from any source, whether from LESSOR or otherwise, and provide written proof of discharge or bonding to LESSOR within that time. LESSEE acknowledges that its interest in the Premises is a leasehold, and that notwithstanding its construction of improvements on the Premises, such improvements accrue to the LESSOR and that it has no equity interest in the Premises which can support a mortgage lien. LESSEE may not mortgage or pledge as collateral its leasehold interest herein without the prior written consent of the LESSOR.

LESSOR may consent, upon LESSEE's written request, to an assignment of rents to a governmentally regulated and insured commercial lender as partial security for financing of LESSEE's activities on the Premises, which assignment is intended to be a present transfer to such lender of all of LESSEE's rights to collect and receive rents and charges from approved users, operators, sublessees and permittees. Lender(s) shall have no rights to assign this Agreement or sublease the Premises without the prior written consent of the LESSOR as required under Section 19, Assignment and Section 20, Subleasing, Permitting and Contracting. Upon LESSEE's written consent LESSOR agrees to give Lender(s) notice of any default or cancellation of the Agreement, and allow Lender(s) the same opportunity as the LESSEE under the Agreement to correct any condition or cure any default. Nothing in this Section is intended to relieve the LESSEE of its obligations under this Agreement.

## **17. TAXES, LICENSES AND PERMITS**

LESSEE shall promptly pay all taxes, excises, license fees and permit fees of whatever nature applicable to its operation or lease of the Premises. LESSEE may elect, however, at its own cost and expense, to contest any such tax, excise, levy, or assessment. LESSEE will keep current all Federal, State or local licenses, operating certificates or permits required for the conduct of its operations. LESSEE represents and warrants to LESSOR that it has obtained all license, franchise, operating certificates or other agreements or permits necessary to operate LESSEE's operation in accordance with the terms of this Agreement, and LESSEE covenants to keep all such licenses, franchises, permits, operating certificates and other agreements in full force and effect during the Term of this Agreement.

LESSEE shall pay all lawful taxes and assessments which, during the term hereof, may become a lien upon or which may be levied by the State, County, City or any other tax levying body, upon the leased Premises or upon any taxable interest of LESSEE acquired in this lease agreement, or any taxable possessory right which LESSEE may have in or to the leased Premises, including any improvements or facilities located on the Premises, as well as LESSEE shall also pay all lawful taxes and assessments on taxable property, real or personal, owned by LESSEE in and about said Premises. Nothing in this Section shall prevent LESSEE from contesting the legality, validity or application of any such tax or assessment to the full extent LESSEE may be lawfully entitled so to do.

## **18. UTILITIES**

The cost of electricity, gas, and water shall be included as a part of the lease rental rate. Any other costs, such as telephone and cable, but not limited to these, shall be at LESSEE's initiation and expense. LESSOR shall not be liable to LESSEE for damages arising out of any cessation or interruption of gas, water, electricity, telephone, or other utility service during the lease term or any extension thereon. LESSOR shall take reasonable steps to promptly restore such services.

LESSOR is the only entity allowed to install or remove any cabling. Cabling includes, but is not limited to, any type of telecommunications or network cable such as CAT3, CAT5, CAT6; fiberoptics cable; and/or coaxial cable. Cabling for basic phone service shall be provided as part of the rental rate. However, should additional network cable, coaxial for security or fiber optic cable, be required for LESSEE's operation, LESSEE shall be required to make arrangements with LESSOR, and such installation shall be at LESSEE's expense. It shall be LESSEE's responsibility to contract for services using such cables from LESSEE's preferred service provider.

Unless otherwise agreed upon in writing, if LESSEE requires utilities beyond that currently provided or that are available to be extended to the Premises boundary, LESSEE agrees to pay the full cost and expense associated with the upgrade/extension/installation of all such utilities related to its use of the Premises, and to comply with all provisions for maintaining such utilities.

The LESSOR reserves for itself the right to upgrade, extend, install, maintain and repair all utilities and services on or across the Premises, whether or not such services or utilities are for the benefit of LESSEE. The LESSOR shall take all reasonable care and diligence to protect existing improvements and utilities, and shall avoid to the greatest extent possible any unreasonable interference or interruption to LESSEE's operations.

All electrical, data and communications utilities installed or caused to be installed shall be underground, and no utility services or other cables or wires shall be installed on poles or otherwise above ground. Unless otherwise provided in this Agreement, all utilities and conduits or ducts installed by anyone on the Premises shall be considered fixtures as defined under Section 15, Title to Facilities, Improvements and Fixtures, and shall become the owned property of LESSOR.

Wastes not legally permitted and authorized for disposal into the storm and/or sanitary drainage system shall not be discharged, connected or introduced into storm and/or sanitary drains and the storm and/or sanitary drainage system. LESSEE shall take all reasonable precautions to prevent the discharge of material into any drainage system that would create interference with the flow therein, or that would cause a hazard or unlawful contamination thereto.



## **19. ASSIGNMENT**

With the exception of assignment to a parent or “holding” company or subsidiary, LESSEE shall have no right to assign or delegate any of its rights or duties pursuant to this Agreement without the prior written consent of LESSOR. Any assignment or delegation so made and so permitted shall be subject to all terms, conditions and other provisions of this Agreement. Any attempted assignment or delegation in violation of this provision shall be void and have no force or effect whatsoever.

## **20. SUBLEASING, PERMITTING AND CONTRACTING**

LESSEE shall not sublease, rent or permit any persons, firms or corporations to occupy any part of the Premises, or to provide any type of commercial or non-commercial operation, aviation or otherwise, on the Premises without having first received the prior written consent of LESSOR, granted only under the following conditions:

(a) Any arrangements must be in the form of a written instrument and must be for purposes and uses of the Premises as authorized under this Agreement, and shall be subject to the provisions of this Agreement. LESSEE shall submit a copy of such proposed instrument at the time of requesting consent of LESSOR.

(b) All sublease(s) must comply with Sections 9, 10, 11, and 12 of this Agreement, and will be reviewed for compliance by LESSOR to that end. Any arrangement for the subleasing of space must be in conformance with the use of the Premises outlined in this Agreement, unless expressly approved otherwise in writing by LESSOR.

(c) LESSEE must keep current records on file and available for LESSOR’s inspection, that describes the nature and document the legitimacy of the sublessee’s business, including all current municipal, state, or local licenses or permits required for the conduct of sublessee’s business.

(d) LESSEE hereby agrees that it shall incorporate language acceptable to LESSOR into all of its sublease agreements, placing on any sublessee and that sublessee’s affiliated entities, customers, employees, invitees, contractors, and subcontractors similar restrictions, as may be appropriate to its approved uses as those which bind LESSEE and its use of the facility through this Agreement. LESSEE shall also incorporate and make reference to this Agreement, as may be amended from time to time, to ensure sublessee’s operations and conduct are subject to and are in compliance with the terms and conditions of this Agreement, as may be amended from time to time. Any sublease agreement shall explicitly state that it is subordinate to this Agreement, and that the sublessee shall never obtain rights in the Premises greater than those held by LESSEE under this Agreement, as amended. Any sublessee shall be specifically subject to eviction from the Premises as a result of termination, cancellation, or expiration of this Agreement, irrespective of sublessee’s state of compliance with the terms of its sublease.

(e) LESSEE shall at all times during the term(s) of approved sublease(s), remain responsible to LESSOR for the compliance of its sublessees with the terms and conditions of any approved sublease and with this Agreement. LESSOR may look to LESSEE directly to satisfy any failure of sublessee to comply with these documents.

(f) Consent to one sublease permit or subcontract shall not be deemed consent to any subsequent sublease permit or subcontract. Prior written consent of the LESSOR shall be required for each sublease permit or subcontract executed by the LESSEE.

## **21. LIABILITY INSURANCE**

LESSEE shall procure, maintain and carry, at its sole cost, in accordance with and/or until completion of this Agreement all insurance, as required per the amounts as set forth below. Insurance shall be furnished by a company licensed to do business in Kansas.

Insurance certificates shall be issued on a standard ACORD form and include the NAIC number of the insuring company. Each insurance company's rating, as shown in the latest Best's Key Rating Guide, shall be no less than A-VII, unless otherwise approved by the LESSOR, or from a Workers' Compensation pool approved by the State of Kansas. Insurance certificates must be received and approved by the LESSOR prior to occupancy.

Should any of the described policies in this Agreement be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. The LESSOR reserves the right to request and receive for review certified copies of any and all insurance policies to which this Agreement is applicable prior to commencement of work. The failure of LESSOR to reject the LESSEE'S certificate of insurance shall not be deemed to constitute an acceptance by the LESSOR of a deficient certificate of insurance. If the LESSEE fails to procure or maintain any of the specified coverages the LESSOR has the right, but not the obligation, to secure the coverage and charge the cost to the LESSEE along with a 20% administrative fee.

The LESSEE shall be responsible for determining the types and limits of insurance coverage required by any approved sublessee. At a minimum, such sublessee shall carry Workers' Compensation, commercial general liability (minimum of \$1,000,000 per occurrence) and commercial automobile liability (minimum of \$1,000,000 combined single limit). LESSEE shall require in any approved sublease that the Wichita Airport Authority and the City of Wichita shall be added as primary and non-contributory additional insureds on the sublessee's commercial general liability policy.

The requirements, procurement and carrying of the required insurance shall not limit any of the LESSEE's obligations or liability under this Agreement or as a matter of law.

Where “minimum limits” of insurance are specified in this Section, such minimum insurance limits are required and considered by LESSOR to be the lowest insured amounts acceptable under this Agreement. The LESSEE is not limited or restricted whatsoever in securing additional insurance coverage and higher insured limits than those specified herein if, at the LESSEES determination and discretion and commensurate with the type of activity and associated business and operational risk, additional coverage and higher limits are necessary and appropriate.

Insurance shall include the following terms, conditions and minimum limits:

a) WORKERS' COMPENSATION

LESSEE shall maintain Workers' Compensation insurance to cover the statutory requirements of the Workers' Compensation laws of the State of Kansas for its operations on the Premises, and when applicable, to Federal Laws and Voluntary Compensation and Employer's Liability (including occupational disease) coverage. In the alternate, LESSEE may provide an appropriate statutory waiver.

b) COMMERCIAL GENERAL LIABILITY

LESSEE shall maintain Commercial General Liability Insurance on an occurrence form. Coverage shall include on-going operations, product/completed operations (minimum of two years following the project completion) and Personal and Advertising Injury. Minimum limits, as outlined herein, shall be:

General Aggregate (per project)	\$1,000,000
Products/Completed Operations	\$1,000,000
Personal and Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000

The Wichita Airport Authority and the City of Wichita shall be added as primary and non-contributory additional insureds with respect to LESSEE's operations.

## **22. ALL RISK PROPERTY INSURANCE**

LESSOR, at its expense, throughout the term of this Agreement, shall cause the structures, facilities, improvements and fixtures on the Premises to be insured against loss or damage by fire or other casualty equal to the full replacement value thereof and by an all risk coverage policy furnished by a company licensed to do business in Kansas. Such policy shall not exclude, or in the alternative, shall carry full coverage endorsements for damage from tornado, hail, flood, and sewer backup. The proceeds of any payments made under such insurance policy or policies shall be used to rehabilitate or reconstruct the insured facilities, subject to the provisions governing damage or destruction found at Section 37, Damage or Destruction.

## **23. SUBROGATION OF INSURANCE**

LESSOR hereby waives any and all rights of recovery against LESSEE for or arising out of damage or destruction of the building, or the demised Premises, or any other property of LESSOR, from causes then included under any of its property insurance policies, to the extent such damage or destruction is covered by the proceeds of such policies, whether or not such damage or destruction shall have been caused by the negligence of LESSEE, its agents, servants or employees or otherwise, but only to the extent that its insurance policies then in force permit such waiver without diminution of LESSOR coverage.

LESSEE hereby waives any and all rights of recovery against LESSOR for or arising out of damage to or destruction of any property of LESSEE from causes then included under any of its property insurance policies, to the extent such damage or destruction is covered by the proceeds of said policies, whether or not such damage or destruction shall have been caused by the negligence of LESSOR, its agents, servants or employees or otherwise, but only to the extent that its insurance policies then in force permit such waiver.

## **24. LOSS OF PERSONAL PROPERTY**

Any personal property of LESSEE or others placed in or upon the Premises shall be at the sole risk of the LESSEE, and LESSOR shall not be responsible or liable for any loss, damage and replacement thereto, regardless of the cause of such loss or damage, and the LESSEE waives all rights of subrogation against recovery from the LESSOR for such loss or damage unless such loss or damage is the result of the LESSOR's negligence.

## **25. CANCELLATION BY LESSOR**

The LESSOR, in addition to any other rights to which it may be entitled by law or otherwise, may cancel this Agreement by giving LESSEE written notice in the event of default by LESSEE under this Agreement continuing for more than sixty (60) days after the LESSEE's receipt of written notice of such event of default and opportunity to cure from the LESSOR, upon or after the happening of any one of the following events:

- (a) LESSEE shall file a voluntary petition in bankruptcy or that proceedings in bankruptcy shall be instituted against it and LESSEE is thereafter adjudicated bankrupt pursuant to such proceedings;
- (b) A court shall take jurisdiction of LESSEE and its assets pursuant to proceedings brought under the provisions of any Federal reorganization act;
- (c) Receiver of LESSEE's assets shall be appointed;
- (d) LESSEE shall be divested of its estate herein by other operation of law;
- (e) LESSEE shall fail to perform, keep and observe any of the obligations, terms, warranties or conditions contained in this Agreement that on the part of LESSEE are to be performed, kept or observed.

If any such condition or default cannot reasonably be corrected within the 60-day period and LESSEE has demonstrated due diligence with respect to curing said default, then, at the LESSOR's sole discretion, such cure period may be extended for consecutive periods of 30 days, as long as diligent progress is made toward cure, with a reasonably foreseeable resolution date. Under such circumstances, default may be treated as cured until cured. Should diligent progress cease, or the reason for default become apparent as insoluble, then the term shall cease and expire at the end of the 30-day extension then in effect.

Acceptance of rental by LESSOR for any period or periods after a notice of default is issued by LESSOR of any of the obligations, terms, warranties and conditions herein contained to be performed, kept and observed by LESSEE shall not be deemed a waiver of any other right on the part of LESSOR to cancel this Agreement for failure by LESSEE so to perform, keep and observe any of the obligations, terms, warranties, or conditions hereof to be performed, kept and observed. No waiver of default by LESSOR of any of the obligations, terms, warranties or conditions hereof to be performed, kept and observed by LESSEE, shall be construed to be or act as a waiver of any subsequent default of any of the obligations, terms, warranties or conditions herein contained to be performed, kept and observed by LESSEE.

## **26. CANCELLATION BY LESSEE**

The LESSEE, in addition to any other rights to which it may be entitled by law or otherwise, may cancel this Agreement by giving LESSOR written notice in the event of default by LESSOR under this Agreement continuing for more than sixty (60) days after the LESSOR's receipt of written notice of such event of default and opportunity to cure from the LESSEE, upon or after the happening of any one of the following events:

(a) Issuance by any court of competent jurisdiction of a permanent injunction in any way preventing or restraining the use of the Airport or any major part thereof for Airport purposes and the remaining in full force of such permanent injunction for a period of at least one hundred eighty (180) days.

(b) Inability of the LESSEE to use, for a period in excess of one hundred eighty (180) days, the Airport or any part of the facility because of any law, order, rule, regulation or other action or non-action of the Federal Aviation Administration or any other governmental authority, or because of fire, earthquake, other casualties or acts of God or the public enemy.

(c) LESSOR shall fail to perform, keep and observe any of the obligations, terms, warranties or conditions contained in this Agreement that on the part of LESSOR are to be performed, kept or observed:

- i. LESSEE may give LESSOR written notice to correct such condition or cure such default, and if any such condition or default shall continue for sixty (60) days after receipt of such notice by LESSOR, LESSEE may terminate this Agreement and the term hereof shall cease and expire at the end of such sixty (60) days in the same manner and to the same effect as if it were the expiration of the Initial or Option Term, unless such condition or default cannot reasonably be corrected within the 60-day period and LESSOR has demonstrated due diligence with respect to curing said default, then such cure period may be extended for consecutive periods of 30 days, as long as diligent progress is made toward cure, with a reasonably foreseeable resolution date. Under such circumstances, default may be treated as cured until cured. Should diligent progress cease, or the reason for default become apparent as insoluble, then the term shall cease and expire at the end of the 30-day extension then in effect;

(d) Assumption by the United States Government or any other authorized agency thereof of the operation, control or use of the Airport and the facility herein described, or of any substantial part or parts thereof in such a manner as to substantially restrict the LESSEE for a period of one hundred eighty (180) days from operating on and within the facility.

(e) In the event of destruction of the facilities, improvements, or the demised Premises as more fully described in Section 37, Damage or Destruction.

## **27. MAINTENANCE AND REPAIR**

LESSEE, at its sole expense, shall at all times keep and maintain said Premises in a clean and sightly condition, free of trash, debris and obstructions.

LESSEE shall maintain and keep in repair at its own expense the interior of said Premises, keeping the same in proper condition, including painting, light bulb replacement, carpet cleaning and any other minor repairs required to keep the Premises in proper condition.

LESSOR shall be responsible for structural repairs to the building (including walls and foundation), ballast replacement and for damages to property or equipment covered by insurance.

LESSOR, its agents or employees, shall have the right to enter upon said Premises at any and all reasonable times to inspect the condition of the same. Should LESSEE, refuse or neglect to maintain its Premises as herein provided, LESSOR shall have the right to perform such maintenance on behalf of and for the LESSEE after thirty days written notice to LESSEE. Any costs for such maintenance shall be paid for by LESSEE, not later than thirty (30) days following demand by LESSOR for such payment at LESSOR's costs, plus twelve percent (12%) as administrative reimbursement to LESSOR.

Notwithstanding any other provisions in this Lease, LESSOR hereby represents and warrants that all electrical, plumbing, heating and air conditioning and mechanical systems located at the Premises are in good working condition upon commencement of this Lease. LESSOR shall keep same in good working condition.

## **28. EXTERIOR SIGNS AND ADVERTISING**

LESSEE agrees that no signs or advertising material shall be erected on the Premises or on any improvement or facility on the Premises unless the design and layout of such signs and advertising material, together with the materials and method of construction of such signs and advertising material, shall have been approved in advance in writing by LESSOR, which approval shall not be unreasonably withheld or unduly delayed.

LESSEE shall not erect, install, operate, nor cause or permit to be erected, installed, or operated upon any non-leased Premises of the Airport property, any signs, banners, or other similar devices for its own business, or the business of others. This provision shall not have the effect of limiting or restricting LESSEE's right to enter into an agreement with LESSOR'S authorized and permitted marketing, advertising or signage agency for the display of informational, marketing or advertising media at approved designated locations on Airport property.

## **29. PORTABLE STORAGE CONTAINERS/STRUCTURES**

Unless specifically approved in writing, and under conditions specified by LESSOR, LESSEE shall not place or allow to be placed upon Premises, any type of portable storage container, trailer, unit, box, or barrel which is used to store merchandise and/or equipment and supplies outside of an enclosed permanent building or structure, which does not qualify as a building or structure under Title 18 of the Code of the City of Wichita. Unless specifically approved, and under conditions specified by LESSOR, LESSEE shall not place or allow to be placed upon Premises, any type of portable or temporary structure, trailer, mobile home, modular structure or device.

LESSOR will not unreasonably withhold approval of such container(s) and structure(s) if such is of a temporary nature for the purpose of supporting construction, alteration or improvement activity, or other approved project.

## **30. GRANTING OF EASEMENTS**

LESSEE shall not (i) grant easements, licenses and other rights or privileges in the nature of easements with respect to the land, or (ii) release existing easements, licenses, right-of-ways and other rights or privileges, and LESSEE agrees, to the extent that it may legally do so, that it will execute and deliver any instrument necessary or appropriate to confirm and grant or release any such easement, license, right-of-way or other right or privilege or any such agreement or other arrangement, upon receipt by LESSEE of (a) a copy of the instrument of grant or release or of the agreement or other arrangement, and (b) a written application signed by the LESSOR requesting execution and delivery of such instrument, provided that, such grant or release is not detrimental to the proper conduct of the business of LESSEE, and such grant or release will not impair the effective use or interfere with the efficient and economical operation of the facilities. LESSEE shall not request any payment or other consideration for such execution, the same being amply supported by the promises exchanged in this Agreement. Any payments or other consideration received by LESSOR for any such grant or with respect to or under any such agreement or other arrangement shall be and remain the property of LESSOR. The obligations of this Section shall survive termination of this Agreement.



### **31. RULES AND REGULATIONS**

LESSEE, its agents and employees, shall be subject to any and all applicable rules, regulations, Airport Standard Operating Procedures, orders and restrictions which are now in force or which may hereafter be adopted by the Wichita Airport Authority or the City of Wichita, Kansas, in respect to the operation of the Airport; and shall also be subject to any and all applicable laws, statutes, rules, regulations or orders of any governmental authority, federal or state, lawfully exercising authority over the Wichita Mid-Continent Airport or LESSEE's operations conducted hereunder.

LESSOR shall not be liable to LESSEE for any diminution or deprivation of its rights hereunder on account of the exercise of any such authority as in this Section provided, nor shall LESSEE be entitled to terminate this Agreement by reason thereof unless exercise of such authority shall so interfere with LESSEE's exercise of the rights hereunder as to constitute a termination of this Agreement by operation of law in accordance with the laws of the State of Kansas, or as set out in Section 26, Cancellation By Lessee.

### **32. ENCROACHERS, TRESPASSERS AND OTHER THIRD PARTY HAZARDS**

LESSEE shall lawfully remove, or cause to be removed by LESSOR or other official law enforcement agency, all encroachers, trespassers and other third parties violating laws of the federal, state or local government, or who are not on the Premises for legitimate purposes.

### **33. FIRE EQUIPMENT AND SYSTEMS**

LESSOR shall furnish and maintain on the Premises sufficient smoke detectors, portable fire extinguishing equipment and sufficient fire suppression as maybe required by city code and insurance underwriters.

### **34. ENVIRONMENTAL COVENANTS**

(a) The LESSEE hereby covenants that it will not cause or permit any Hazardous Substances to be placed, held, located, or disposed of, on, under or at the Premises, other than in the ordinary course of business and in compliance with all applicable laws.

(b) In furtherance and not in limitation of any indemnity elsewhere provided in this Agreement to the LESSOR, the LESSEE hereby agrees to indemnify and hold harmless the LESSOR and the City of Wichita from and against any and all losses, liabilities, including strict liability, damages, injuries, expenses, including reasonable attorneys' fees, costs of any settlement or judgment and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against, the LESSOR or the City of Wichita by any person or entity for or arising out of the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, discharging or release from the Premises during any term of this lease of any Substance (hazardous or otherwise) regulated by any applicable statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability, including strict liability, or standards of conduct concerning, any Hazardous Substance (including, without limitation, any losses, liabilities, reasonable attorneys' fees, costs of any settlement or judgment or claims asserted or arising under the Comprehensive Environmental Response, Compensation and Liability Act, any federal, state or local so-called "Superfund" or "Super lien" laws), if such presence, escape, seepage, leakage, spillage, discharge, emission was caused by the LESSEE, or persons within the control of the LESSEE, its officers, employees, agents, contractors, invitees and/or licensees, or if such Substance (hazardous or otherwise) was owned by, or located on the Premises by, the LESSEE (without regard to the actual cause of any escape, seepage, leakage, spillage, discharge, emission or release).

(c) If, during the term of this Agreement, the LESSEE receives any notice of (i) the happening of any event involving the use (other than in the ordinary course of business and in compliance with all applicable laws), spill, release, leak, seepage, discharge or cleanup of any Substance (hazardous or otherwise) on the Premises or in connection with the LESSEE's operations thereon or (ii) any complaint, order, citation or notice with regard to air emissions, water discharges, or any other environmental, health, or safety matter affecting the LESSEE from any persons or entity (including, without limitation, the United States Environmental Protection Agency (the "EPA") or the Kansas Department of Health and Environment ("KDHE")), the LESSEE shall immediately notify the LESSOR in writing of said notice.

(d) The LESSOR shall have the right, but not the obligation, and without limitation of the LESSOR's other rights under this Agreement, to enter the Premises or to take such other actions as deemed necessary or advisable to inspect, clean up, remove, resolve or minimize the impact of, or to otherwise deal with, any Substance (hazardous or otherwise) or environmental complaint following receipt of any notice from any person, including, without limitation, the EPA or KDHE, asserting the existence of any Substance (hazardous or otherwise) or an environmental complaint pertaining to the Premises or any part thereof which, if true, could result in an order,

suit or other action against the LESSEE and/or which, in the reasonable judgment of the LESSOR, could jeopardize its interests under this Agreement. If such conditions are caused by circumstances within the control of the LESSEE or if such circumstances result from a Substance (hazardous or otherwise) owned by, or located on the Premises by, the LESSEE (without regard to the actual cause of any escape, seepage, leakage, spillage, discharge, emission or release) all reasonable costs and expenses incurred by the LESSOR in the exercise of any such rights shall be payable by the LESSEE, within 15 days of written demand by Landlord.

(e) If an event of default shall have occurred and be continuing, the LESSEE at the request of the LESSOR shall periodically perform, at the LESSEE's expense, an environmental audit and, if reasonably deemed necessary by the LESSOR, an environmental risk assessment, of the Premises, or the hazardous waste management practices and/or hazardous waste disposal sites used by the LESSEE with respect to the Premises. Such audits and/or risk assessments shall be conducted by an environmental consultant satisfactory to the LESSOR, and all environmental audits and environmental risk assessments must be reasonable satisfactory to the LESSOR. Should the LESSEE fail to perform any such environmental audit or risk assessment within 90 days of the written request of the LESSOR, the LESSOR shall have the right, but not the obligation, to retain an environmental consultant to perform any such environmental audit or risk assessment. All costs and expenses incurred by the LESSOR in the exercise of such rights shall be payable by the LESSEE on demand.

(f) Neither LESSEE nor LESSOR shall install or permit to be installed in the Premises friable asbestos, electrical equipment containing polychlorinated biphenyls (PCBs), or any Substance containing asbestos and deemed hazardous by federal or state regulations applicable to the Premises and respecting such material. The LESSEE shall defend, indemnify, and save the LESSOR and the City of Wichita harmless from all costs and expenses (including consequential damages) asserted or proven against the LESSEE by any person, as a result of the presence of said Substances, and the costs of any removal or compliance with such regulations, if said Substance was installed by the LESSEE, or persons within its control.

(g) Subject to any limitations or restrictions imposed by the Kansas Budget Law or Cash Basis Law, the LESSOR hereby agrees to indemnify and hold harmless the LESSEE from and against any and all losses, liabilities, including strict liability, damages, injuries, expenses, including reasonable attorneys' fees, costs of any settlement or judgment and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against, the LESSEE by any person or entity for, arising out of, the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, discharging or release from the Premises during the term of this Agreement and the period prior to the term of this Agreement of any Substance (hazardous or otherwise) (including, without limitation, any losses, liabilities, reasonable attorneys' fees, costs of any settlement or judgment or claims asserted or arising under the Comprehensive Environmental Response, Compensation and Liability Act, any federal, state or local so-called "Superfund" or "Super lien" laws, or any other applicable statute, law, ordinance, code, rule, regulation, order of decree regulating, relating to or imposing liability, including strict liability, or

standards of conduct concerning any Hazardous Substance) unless such presence, escape, seepage, leakage, spillage, discharge, emission or release was caused by the LESSEE, or persons within the control of the LESSEE, its officers, employees, agents, invitees and/or licensees, or if such Substance (hazardous or otherwise) was owned by, or placed upon the Premises by, the LESSEE (without regard to the actual cause of any escape, seepage, leakage, spillage, discharge, emission or release except to the extent such was caused by the LESSOR).

Environmental compliance shall not be limited to those items noted within this lease but shall include any current or future federal, state, or local law, statute or regulation, that may be required of LESSEE's operation (storage or use of Substances (hazardous or otherwise), activities of LESSEE's employees or contracted vendor's etc.). Tenant shall provide LESSOR upon request copies of any plan, training program, training records, material safety data sheet or any other documentation required by said laws.

(h) The provisions of this article shall survive the termination of this Agreement.

### **35. IMPOSITIONS**

LESSEE shall, during the life of this Agreement, bear, pay and discharge, before the delinquency thereof, any and all impositions, including all lawful taxes and assessments imposed on the Premises, personal property thereon, or LESSEE's possessory right therein. In the event any impositions may be lawfully paid in installments, LESSEE shall be required to pay only such installments thereof as become due and payable during the life of this Agreement as and when the same become due and payable. LESSOR covenants that without LESSEE's written consent it will not, unless required by law, take any action intended to cause or induce the levying or assessment of any imposition (other than special assessments levied on account of special benefits or other impositions for benefits or services uniformly imposed) which LESSEE would be required to pay under this Section and that should any such levy or assessment be threatened or occur LESSOR shall, at LESSEE's request, fully cooperate with LESSEE in all reasonable ways to prevent any such levy or assessment. Nothing herein contained shall prevent LESSEE from contesting the legality, validity, or application of any such tax or assessment to the full extent LESSEE may be lawfully entitled to do so.

### **36. INDEMNITY**

Subject to the waiver of subrogation provisions of this Lease, LESSEE, shall protect, defend and hold LESSOR and the City of Wichita and its officers, agents and employees completely harmless from and against any and all liabilities, losses, suits, claims, judgments, fines or demands arising by reason of injury or death of any person or damage to any property, including all reasonable costs for investigation and defense thereof (including but not limited to attorney fees, court cost and expert fees), of any nature whatsoever arising out of or incident to this Agreement and/or the use or occupancy of the Premises or the acts or omissions of LESSEE's officers, agents, employees, contractors, subcontractors, licensees or invitees, regardless of where the injury, death or damage may occur, except to the extent such injury, death or damage is caused by the negligence of LESSOR. The LESSOR shall give to LESSEE reasonable notice of any such claims or actions.

Subject to the provision of the Kansas Tort Claims Act, and the waiver subrogation provisions of this Lease, LESSOR shall protect, defend and hold LESSEE, its officers, agents and employees completely harmless from and against all liabilities, losses, suits, claims, judgments, fines or demands arising by reason of injury to or death of any person or damage to any property, including all reasonable costs for investigation and defense thereof (including but not limited to attorney fees, court costs and expert fees), of any nature whatsoever arising out of or incident to this agreement and/or the use or occupancy of the Premises or the acts of omissions of LESSOR's officers, agents, employees, contractors, subcontractors, licensees or invitees, regardless of where the injury, death or damage is caused by the negligence of LESSEE. The LESSEE shall give LESSOR reasonable notice of any such claims or actions.

The provisions of this Section shall survive the expiration or termination of this Agreement to the extent that they relate to liabilities, losses, suits, claims, judgments, fines or demands arising from or incident to events occurring during LESSEE'S occupancy of the Premises. The LESSEE shall use counsel reasonably acceptable to LESSOR in carrying out its obligations in this Section.

### **37. DAMAGE OR DESTRUCTION**

In the event that facilities or improvements on the Premises are damaged or destroyed in whole or in part by fire, lightning or any other peril or other casualty during the term of this Agreement, this Agreement shall remain in full force and effect and LESSEE shall proceed with due diligence to repair, restore, rebuild or replace said damaged or destroyed property or parts thereof to as good a condition as all affected properties were in immediately prior to such damage or destruction, subject to such alterations as LESSEE may elect to make and are permitted in this Agreement. All proceeds from the insurance policies related to such damage or destruction shall be applied to cover the cost of such repairs or restoration.

In the event the improvements are damaged or destroyed in whole or in part by fire, lightning or any other peril or casualty not resulting in whole or in part from the actions of the LESSEE during the term of this Agreement, and such damage, destruction or loss exceeds fifty five percent (55%) of the value of the property as it existed prior to the casualty loss, LESSEE shall have the election, indicated by written notice given to LESSOR within 180 days after the occurrence of such event, not to repair, restore, rebuild or replace the improvements. Upon such election by LESSEE, this Agreement shall be terminated effective as of the date such notice is given by LESSEE, and neither party shall have any further rights or obligations pursuant to this Agreement other than LESSEE'S obligation to satisfy damages arising from any negligent or intentional action of itself, its employees, agents or invitees to the extent not covered by insurance proceeds. All of the insurance proceeds shall be paid to LESSEE and LESSOR in pro-rata distributions as their interests may appear based upon the fair market value of each party's interest at the time the proceeds are received. Where allowed by the insurance policy, insurance proceeds shall first be applied to removal of damaged improvements from the Premises before such distribution.

### **38. CONDEMNATION**

If, during the term, title to, or the temporary use of, all or any part of the Premises shall be condemned by any authority exercising the power of eminent domain, LESSEE shall, within fifteen (15) days after the date of entry of a final order in any eminent domain proceedings granting condemnation, notify LESSOR in writing as to the nature and extent of such condemnation and whether it is practicable for LESSEE to acquire or construct substitute improvements, or whether LESSEE shall elect to terminate this lease.

If LESSEE shall determine that such substitution is practicable and desirable and LESSOR shall agree thereto, LESSEE shall forthwith proceed with and complete with reasonable dispatch the acquisition or construction of such substitute improvements. In such case, any net proceeds received from any award or awards with respect to the Premises or any part thereof made in such condemnation or eminent domain proceeds shall be used and applied for the purpose of paying the cost of such substitution. Any proceeds not required for such costs shall be distributed to the parties in pro-rata distributions as their interests may appear based upon Agreement term remaining and the fair market value of each party's interest at the time the proceeds are received.

If LESSEE shall determine that it is not practicable and desirable to acquire or construct substitute improvements, any net proceeds shall be distributed to the parties in pro-rata distributions as their interests may appear based upon the Agreement term remaining, and the fair market value of each party's interest at the time the proceeds are received.

LESSOR shall cooperate fully with LESSEE in the handling and conduct of any prospective or pending condemnation proceedings with respect to the Premises or any part thereof. In no event will LESSEE or LESSOR voluntarily settle or consent to the settlement of any prospective or pending condemnation proceedings with respect to the Premises without the mutual agreement and written consent of the other party to this Agreement.

### **39. MODIFICATIONS FOR GRANTING FAA FUNDS**

In the event that the LESSOR determines the Federal Aviation Administration requirements call for modifications or changes to this Agreement as a condition precedent to granting of funds for the improvement of the Airport, these modifications or changes shall supersede this Agreement and LESSEE agrees to consent to such amendments, modifications, revisions, supplements or deletions of any of the terms, conditions or requirements of this Agreement as may be reasonably required by the LESSOR to fully comply with federal grant assurances and directives and to obtain Federal Aviation Administration grants-in-aid, provided that no such changes shall materially alter the rights or obligations of LESSEE hereunder.

### **40. NONDISCRIMINATION**

The LESSEE agrees that it will not discriminate or permit discrimination against any person on the basis of race, color, sex, religion, disability, age (except where age is a bona fide occupational qualification), national origin or ancestry in its operations or services, and its use or occupancy of property under this Agreement. The LESSEE agrees to comply with all applicable provisions of federal and state laws, regulations, or executive orders prohibiting discriminatory conduct.

### **41. GENERAL PROVISIONS**

**Facility Development.** LESSOR reserves the right to further develop or improve the landing area or any other area, building or other improvement within the present or future boundaries of Airport as it sees fit in its sole judgment regardless of the desires or view of LESSEE and without interference or hindrance by LESSEE. Further, LESSOR retains the absolute right to maintain, repair, develop and expand or replace the terminal building, utilities, ramps, taxiways, runways, streets, roadways, sidewalks, any other airport facility, airport improvement or airport property free from any and all liability to LESSEE for loss of business or damage of any nature whatsoever as may be occasioned during or because of the performance of such maintenance, repair, development, expansion or replacement.

**Maintenance, Repair, Direction and Control.** LESSOR reserves the right, but is not obligated to exercise the right, to maintain and keep in repair the landing area of the Airport and all publicly owned facilities of the Airport, together with the right to direct and control all activities of LESSEE in this regard. These areas will include, but are not limited to, those areas which are necessary to serve the aeronautical users of the Airport, except that LESSOR will not be obligated to maintain and keep in repair such areas of the Airport as may be leased to or under the control of Airport tenants, whether such area serves aeronautical users or otherwise.

**Operation of Airport by the United States of America.** This Agreement and all the provisions hereof will be subject to whatever right the United States of America now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of said Airport or the exclusive or nonexclusive use of the Airport by the United States during the time of war or national emergency.

**14 CFR Part 77 of Federal Aviation Regulations.** LESSEE agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event future construction of a building, structure, or attachment thereto is planned for the Premises, or in the event of any planned modification or alteration of any present or future building or structure situated on the Premises. LESSEE by accepting this Agreement expressly agrees for itself, its successors and assigns, that it will not erect nor permit the erection of any structure or object, nor permit the growth of any tree on the Premises which will exceed such maximum height as may be stipulated by LESSOR. It is understood and agreed that applicable laws, codes, regulations or agreements concerning height restrictions will govern the maximum height to be stipulated by LESSOR. In the event the aforesaid covenants are breached, LESSOR reserves the right to enter upon the Premises and to remove the offending structure or object, and cut down the offending tree, all of which will be at the expense of LESSEE and without liability to LESSOR.

**Airspace.** There is hereby reserved to LESSOR, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Premises. This public right of flight will include the right to cause or allow in said airspace, any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from or operation on the Airport. No liability on the part of LESSOR will result from the exercise of this right.

**Easement for Flight.** LESSEE releases LESSOR from any present or future liability whatsoever and covenants not to sue LESSOR for damages or any other relief based directly or indirectly upon noise, light, vibrations, smoke, fumes, odors, air currents, electronic or other emissions occurring as a result of aviation or airport related operations at or otherwise associated with the Airport. This release and covenant includes but is not limited to claims for damages for physical



or emotional injuries, discomfort, inconvenience, property damage, death, interference with use and enjoyment of property, nuisance, or inverse condemnation or for injunctive or other extraordinary or equitable relief. It is further agreed that LESSOR shall have no duty to avoid or mitigate such damages by, without limitation, setting aside or condemning buffer lands, rerouting air traffic, erecting sound or other barriers, establishing curfews, noise or other regulations, relocating airport facilities or operations or taking other measures, except to the extent, if any, that such actions are validly required by government authority. LESSOR reserves these rights from the Premises an easement for flight of aircraft in or adjacent to the airspace above the Premises and for the existence and imposition over, on and upon said Premises of noise, light, vibrations, smoke, fumes, odors, air currents, electronic or other emissions, discomfort, inconvenience, interference with use and enjoyment, and any consequent reduction in market value which may occur directly or indirectly as a result of aviation, airport or airport-related operations at or otherwise associated with use of the Airport. LESSEE accepts the Premises subject to the risks and activities hereinabove described.

**Airport Hazards.** LESSEE by accepting this Agreement agrees for itself, its successors and assignees, that it will not make use of the leased Premises in any manner which might interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard. In the event this Agreement term is breached, LESSOR reserves the right to enter upon the Premises and cause the abatement of such interference at the expense of LESSEE without liability to LESSOR of any kind.

**Airport Rules and Regulations, Policies, and Standard Operating Procedures.** LESSOR will have the right to adopt, amend and enforce reasonable airport rules and regulations, policies and standard operating procedures with respect to use of and the conduct and operation of the Airport, its buildings and facilities or any improvements within the present or future boundaries of the Airport, which LESSEE agrees to observe and obey.

**Federal Aviation Administration Requirements.** LESSOR and LESSEE agree that the requirements of the Federal Aviation Administration (FAA) set out below are approved by both parties, and if applicable, LESSEE agrees to comply with all FAA requirements with respect to its operations, use of the Airport and this Agreement:

(a) The LESSEE, for itself and its representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained or otherwise operated on said property described in this Agreement for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the LESSEE shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted

Programs of the Department of Transportation, and as said Regulations may be amended.

(b) The LESSEE, for itself and its representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the LESSEE shall use the Premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

(c) The LESSEE assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. The LESSEE assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. The LESSEE assures that it will require that its covered suborganizations provide assurances to the LESSEE that they similarly will undertake affirmative action programs, and that they will require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

(d) It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308 of the Federal Aviation Act of 1958.

(e) LESSEE agrees to furnish service on a fair, equal and not unjustly discriminatory basis to all users thereof, and to charge fair, reasonable and not unjustly discriminatory prices for each unit or service; PROVIDED, that LESSEE may make reasonable and nondiscriminatory discounts, rebates or other similar types of price reductions to volume purchasers.

(f) LESSOR reserves the right (but shall not be obligated to LESSEE) to maintain and keep in repair the landing area of the airport and all publicly-owned facilities of the airport, together with the right to direct and control all activities of LESSEE in this regard.

(g) LESSOR reserves the right further to develop or improve the landing area and all publicly-owned air navigation facilities of the airport as it sees fit, regardless of the desires or views of LESSEE, and without interference or hindrance.

(h) LESSOR reserves the right to take any action it considers necessary to protect the aerial approaches of the airport against obstruction, together with the right to prevent LESSEE from erecting, or permitting to be erected, any building or other structure on the airport which, in the opinion of LESSOR, would limit the usefulness of the airport or constitute a hazard to aircraft.

(i) During time of war or national emergency LESSOR shall have the right to enter into

an agreement with the United States Government for military or naval use of part or all of the landing area, the publicly-owned air navigation facilities and/or other areas or facilities of the airport. If any such agreement is executed, the provisions of this instrument, insofar as they are inconsistent with the provisions of the agreement with the Government, shall be suspended.

(j) It is understood and agreed that the rights granted by this agreement will not be exercised in such a way as to interfere with or adversely affect the use, operation, maintenance or development of the airport.

(k) There is hereby reserved to LESSOR, its successors and assigns, for the use and benefit of the public, a free and unrestricted right of flight for the passage of aircraft in the air space above the surface of the Premises herein conveyed, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft now known or hereafter used for navigation of or flight in the air, using said airspace or landing at, taking off from or operating on or about the airport.

(l) This Agreement shall become subordinate to provisions of any existing or future agreement between the LESSOR and the United States of America or any agency thereof relative to the operation, development or maintenance of the airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport.

**Subordination to Agreements with the U.S. Government.** This Agreement is subject and subordinate to the provisions of any agreements heretofore or hereafter made between LESSOR and the United States Government relative to the operation or maintenance of Airport, the execution of which has been required as a condition precedent to the transfer of federal rights or property to LESSOR for Airport purposes, or the expenditure of federal funds for the improvement or development of Airport, including the expenditure of federal funds for the development of Airport in accordance with the provisions of the Federal Aviation Act of 1958, as it has been amended from time to time. LESSOR covenants that it has no existing agreements with the United States Government in conflict with the express provisions hereof.

**Non-Waiver of Rights.** No waiver or default by either party of any of the terms, warranties, covenants and conditions hereof to be performed, kept and observed by the other party shall be construed as, or shall operate as, a waiver of any subsequent default of any of the terms, warranties, covenants or conditions herein contained, to be performed, kept and observed by the other party.

**Notices.** Notices required herein may be given by registered, certified, or express mail, and shall be deemed served on the date such notice is deposited in the United States Mail, or by prepaid private courier in the continental United States. Either party shall have the right, by giving written notice to the other, to change the address at which its notices are to be received.

Until any such change is made, notices to LESSOR shall be delivered as follows:

Wichita Airport Authority  
Wichita Mid-Continent Airport  
2173 Air Cargo Road  
Wichita, Kansas 67209

Until any such change is made, notices to LESSEE shall be delivered as follows:

EagleMed LLC  
6601 Pueblo Road  
Wichita, Kansas 67209

**Captions.** The captions/headings of the Sections of this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope or intent of any provisions of this Agreement, and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

**Severability and Invalid Provisions.** In the event any term, covenant, condition or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of any such term, covenant, condition or provision shall in no way affect any other term, covenant, condition or provision herein contained; provided, however, that the invalidity of any such term, covenant, condition or provision does not materially prejudice either the LESSOR or the LESSEE in their respective rights and obligations contained in the valid terms, covenants, conditions or provisions in this agreement.

**Waiver of Claims.** LESSEE hereby waives any claim against LESSOR and its officers or employees for loss of anticipated profits, consequential or incidental damages, or claim for attorney fees caused by or resulting any suit or proceedings directly or indirectly attacking the validity of Agreement or any part thereof, or the manner in which it is executed or performed, or by any judgment or award in any legal proceeding declaring this Agreement null, void or voidable, or delaying the same of any part thereof, from being carried out. This waiver extends to all claims, whether the supporting legal theory lies in common law or has a statutory basis.

**Incorporation of Exhibits.** All exhibits referred to in this Agreement are intended to be and are hereby specifically made a part of this Agreement.

**Incorporation of Required Provisions.** The parties incorporate in this Agreement by this reference all provisions lawfully required to be contained herein by any governmental body or agency.

**Non-Liability of Agents and Employees.** No member, officer, agent or employee of either party to this Agreement shall be charged personally, or held contractually liable by or to the other party under the terms or provisions of this Agreement, or because of any breach thereof or because of its or their execution or attempted execution.

**Successors and Assigns Bound.** This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto where permitted by this Agreement.

**Time of Essence.** Time is of the essence in this Agreement.

**Relationship of the Parties.** It is understood LESSEE is not in any way or for any purpose a partner or joint venturer with or an agent of LESSOR. LESSEE shall act as an independent contractor in the performance of its duties pursuant to this Agreement.

**Interpretation.** LESSOR and LESSEE hereby agree that this Agreement shall not be construed or interpreted in favor of either party on the basis of preparation.

**Kansas Laws to Govern.** This Agreement and the terms and conditions herein contained shall at all times be governed, interpreted and construed under and in accordance with the laws of the State of Kansas, and venue for resolution of any issue pertaining to this Agreement shall be in Sedgwick County, Kansas.

## **42. THIRD PARTY RIGHTS**

It is agreed between the parties that it is not intended by any of the provisions of this Agreement to create for the public or any member thereof the status of a third-party beneficiary, or to authorize anyone not a party to this Agreement to maintain a suit for damages pursuant to the terms or provisions of this Agreement.

## **43. QUIET ENJOYMENT**

LESSOR agrees that, on payment of the rentals and fees and performance of the terms, covenants, conditions and agreements on the part of LESSEE to be performed in this Agreement, LESSEE will have the right to peaceably occupy and enjoy the Premises, subject however, to the GENERAL PROVISIONS contained in Section 41.

#### **44. HOLD OVER**

In the event LESSEE holds over the lease of the Premises, any rights granted after expiration of this Agreement without any written renewal of it shall not be deemed to operate as a renewal or extension of this Agreement, but shall only create a month-to-month arrangement, which may be terminated within thirty (30) days notice by LESSOR or LESSEE.

#### **45. SURRENDER OF POSSESSION AND RESTORATION**

LESSEE shall yield and deliver to LESSOR possession of the Premises at the expiration or termination of this Agreement in good condition in accordance with LESSEE's obligations in this Agreement, except for reasonable wear and tear, or fire or other casualty for which full insurance compensation has been paid as agreed. LESSEE shall, at its expense, deliver the Premises in good order and condition, including: (1) cleaning and hauling away all supplies and trash; (2) removing by legal means all materials and Substances classified as hazardous; (3) leaving in operating condition all bulbs and ballasts; (4) replacing all broken glass, (5) remove all computer network cable, and (6) return to LESSOR all keys to all doors and gates.

LESSEE, at LESSEE's expense, shall remove during the Term of the Agreement or at its expiration all non-attached equipment and personal property placed by LESSEE on or about the Premises herein leased, subject to LESSEE's repairing any damage thereto caused by such removal and subject to any valid lien which LESSOR may have on that property for unpaid rents, expenses or fees.

In the event LESSEE does not remove all of its equipment and personal property within thirty (30) calendar days after the termination of this Agreement, any remaining property shall be considered abandoned and LESSOR may dispose of said property without any further responsibility or liability to LESSEE. The net disposal costs of such property shall be the financial obligation of LESSEE.

#### **46. INTENTION OF PARTIES**

This Agreement is intended solely for the benefit of LESSOR and LESSEE and is not intended to benefit, either directly or indirectly, any third party or member(s) of the public at large. Any work done or inspection of the Premises performed by LESSOR is solely for the benefit of LESSOR and LESSEE.

Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint ventures, or any other

similar such relationship, between the parties hereto. Further, non-parties to this Agreement may not maintain a suit for personal injuries or property damage pursuant to the terms or provisions of the Agreement. The parties shall understand and agree that neither the method of payment, nor any other provision contained herein, nor any act(s) of the parties hereto creates a relationship other than the relationship of the LESSOR and the LESSEE.

#### **47. ENTIRE AGREEMENT**

The parties understand and agree that this instrument contains the entire Agreement between them. The parties hereto further understand and agree that the other party and its agents have made no representations or promises with respect to the Agreement or the making or entry into this Agreement, except as expressed in this Agreement, and that no claim or liability or cause for termination shall be asserted by either party against the other and such party shall not be liable by reason of, the making of any representations or promises not expressly stated in this Agreement, any other written or oral agreement with the other being expressly waived.

The individuals executing this Agreement personally warrant that they have full authority to execute this Agreement on behalf of the entity for which they are acting herein.

The parties hereto acknowledge that they have thoroughly read this Agreement, including any exhibits or attachments hereto, and have sought and received whatever competent advice and counsel deemed necessary for them to form a full and complete understanding of all rights and obligations herein.

#### **48. AMENDMENT**

This Agreement constitutes the entire Agreement between the parties for the lease of Premises set forth and identified under Section 1. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless the same is in writing, dated subsequent to the date hereof, and duly executed by the parties hereto.

#### **49. APPROVAL, CONSENT, DIRECTION OR DESIGNATION BY LESSOR**

Wherever under this Agreement, approvals, consents, directions, or designations are required or permitted, such approvals, consents, directions, or designations required or permitted under this Agreement shall be performed by the Director of Airports, or his/her authorized representative. Approvals, consents, directions, or designations made at any time by the Director of Airports, and from time to time, may be withdrawn or modified by notice from LESSOR to LESSEE.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

ATTEST:

THE WICHITA AIRPORT AUTHORITY  
WICHITA, KANSAS

By \_\_\_\_\_  
Karen Sublett, City Clerk

By \_\_\_\_\_  
Carl Brewer, President  
"LESSOR"

By \_\_\_\_\_  
Victor D. White, Director of Airports

ATTEST:

By \_\_\_\_\_

By \_\_\_\_\_  
Larry Bugg, President  
EAGLEMED, LLC  
"LESSEE"

APPROVED AS TO FORM: \_\_\_\_\_ Date: \_\_\_\_\_  
Director of Law





DATE	DR. BY	SCALE	SHEET
4/24/12	H.G.O.	1" = 30'	1 of 1

City of Wichita  
City Council Meeting  
May 15, 2012

**TO:** Wichita Airport Authority

**SUBJECT:** EagleMed, LLC  
Lease Agreement for use of 1761 Airport Road, Suite 400  
Wichita Mid-Continent Airport

**INITIATED BY:** Department of Airports

**AGENDA:** Wichita Airport Authority (Consent)

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**Recommendation:** Approve the Agreement.

**Background:** In December 1998, the Wichita Airport Authority (WAA) entered into a land lease agreement with Ballard Aviation, Inc. for the purpose of constructing a facility at 6601 Pueblo Road to be used for the provision of public air charter services, including air ambulance services. On August 18, 2009, the WAA approved an assignment of the lease from Ballard Aviation to EagleMed, LLC (EagleMed), a subsidiary limited liability company of Ballard, followed by the acquisition of all of the membership interests of EagleMed by Air Medical Group Holdings, Inc. (AMGH). AMGH is the largest independent provider of emergency air medical transportation services in the United States.

**Analysis:** Based upon EagleMed's growth, they are desirous of leasing 4,281 sq. ft. of office space at the multi-tenant Mid-Continent Executive Suites facility at 1761 Airport Road, for a two-year base period plus three, one-year renewal options.

**Financial Considerations:** The facility rental for the first year of the initial term is \$10 per sq. ft., which will result in new annual revenue to the WAA of \$42,810. The facility rental rate for the second initial term year is \$11 per sq. ft., which will result in new annual revenue to the WAA of \$47,091. The facility rental rate for the three (3) option terms is \$12 per sq. ft., which will result in new annual revenue to the WAA of \$51,372.

**Goal Impact:** The Airport's contribution to the Economic Vitality and Quality of Life of Wichita is promoted through negotiating agreements which allow the Airport system's business partners to continue operations on the Airport, which generate rental income for the WAA and allows the Airport to continue its operation on a self-sustaining basis.

**Legal Considerations:** The Agreement has been approved as to form by the Law Department.

**Recommendations/Actions:** It is recommended that the Wichita Airport Authority approve the Agreement and authorize the necessary signatures.

**Attachments:** Agreement.

AGREEMENT

By and Between

WICHITA AIRPORT AUTHORITY  
Wichita, Kansas

and

EagleMed, LLC

for

Use of Facility – 1761 Airport Road – Suite 400  
Wichita Mid-Continent Airport  
Wichita, Kansas

THIS AGREEMENT is entered into this May 15, 2012, between THE WICHITA AIRPORT AUTHORITY, Wichita, Kansas (LESSOR) and EAGLEMED, LLC., (LESSEE).

WHEREAS, LESSOR is a governmental or quasi-governmental entity authorized under the laws of the State of Kansas to own and operate one or more airports, with full, lawful power and authority to enter into binding legal instruments by and through its governing body; and

WHEREAS, LESSOR owns, operates, regulates, administers, and maintains the campus of Wichita Mid-Continent Airport (Airport); and

WHEREAS, LESSEE is an entity authorized to operate in the State of Kansas that desires to lease real property commonly known as 1761 Airport Road, Suite 400, Wichita, Kansas, the office space defined below (Premises) on the campus of Wichita Mid-Continent Airport (Airport) from LESSOR under the terms and conditions set forth below in this Use and Lease Agreement (Agreement).

NOW, THEREFORE, in consideration of the mutual promises and agreements herein set forth, LESSOR and LESSEE do hereby covenant and agree as follows:

## **1. PREMISES**

LESSOR does hereby lease to LESSEE the Premises located at 1761 Airport Road, Suite 400 on Wichita Mid-Continent Airport, consisting of 4,281 square feet of office space, all referred to herein as the Premises, as outlined on Exhibit "A", attached hereto and made a part hereof.

## **2. INITIAL TERM**

The Term of this Agreement shall commence on May 1, 2012, and shall continue for a period of two (2) years ("Initial Term"), with the Initial Term expiring on April 30, 2014, unless otherwise terminated under provisions agreed to herein.

## **3. OPTION TERM**

This Agreement may be renewed for three (3), one-year periods ("Option Term"), with the last Option Term expiring on April 30, 2017, provided LESSEE is not in default hereunder beyond any applicable grace or cure periods in rental or other payments to LESSOR at the time such notice exercising the Option Term is given. If LESSEE chooses to exercise its option to renew, written notice shall be submitted to LESSOR no less than ninety (90) days prior to the expiration of the Initial Term. If LESSEE chooses to relocate and lease other property owned by the LESSOR through use of a Replacement Lease Agreement, then the LESSEE shall have the right to cancel this Agreement during any of the Option Terms by providing a ninety-day (90) written notice after the execution of the Replacement Lease Agreement. If LESSEE is in default of any obligation under this Agreement beyond the time periods expressly allowed in this Section, then any notice attempting to exercise the Option Term shall be void.

## **4. DEPOSIT**

LESSOR shall have the option at any time to request a security deposit equal to one month's payment. This security deposit shall be retained by the LESSOR during the term hereof as security for the full, faithful performance of and compliance with, on the part of the LESSOR, all of the provisions, terms and conditions of this Agreement. Said security deposit shall be returned to Lessee upon expiration or termination of this Agreement less any moneys due the LESSOR.

## **5. FACILITY RENT DURING INITIAL TERM**

The parties hereby agree that the Facility Rent for the first year of the Initial Term, effective May 1, 2012, shall be set at \$10.00 per square foot. This rental will result in an annual payment of \$42,810.00, payable in monthly installments of \$3,567.50.

The Facility Rent for the second year of the Initial Term, effective May 1, 2013, shall be set at \$11.00 per square foot. This rental will result in an annual payment of \$47,091.00, payable in monthly installments of \$3,924.25.

The Facility Rent for the three (3) contemplated option terms, effective May 1, 2014, shall be set at \$12.00 per square foot per year. This rental will result in an annual payment of \$51,372.00, payable in monthly installments of \$4,281.00.

## **6. OTHER FEES AND CHARGES**

It is understood and agreed by LESSEE that LESSOR may assess fees and charges to LESSEE according to rates established by LESSOR's Schedule of Fees and Charges. Such Schedule shall be amended from time to time by action of the LESSOR.

Any amounts due LESSOR from LESSEE for utility, maintenance, reimbursements, or other special charges will be paid by LESSEE within thirty (30) days of the date of the invoice.

## **7. PAYMENTS**

LESSEE shall make all payments to the Wichita Airport Authority, and in a form acceptable to LESSOR. Payments made by check and reports shall be delivered or mailed to:

Wichita Airport Authority  
2173 Air Cargo Road  
Wichita, Kansas 67209

or such other address as designated in writing.

LESSEE shall pay to LESSOR in advance on the first day of each month, without demand or invoicing, facility rental for the Premises as set forth herein. In the event LESSEE fails to make payment within ten (10) days of the dates due as set forth in this Section, then LESSOR may charge LESSEE a monthly service charge of twelve percent (12%) on an annual basis for any

such overdue amount, plus reasonable attorneys' and administrative fees incurred by LESSOR in attempting to obtain payment.

## **8. LESSEE'S IDENTITY**

LESSEE must be a natural person or an entity, firm, company, corporation, partnership or a joint venture which has substance under State of Kansas Law and a specific legal identity and business purpose as registered with the Secretary of State in the LESSEE's state of business residence.

## **9. PERMITTED USE OF PREMISES**

LESSEE shall have the right of ingress and egress, in common with others for the benefit of its employees, invitees, contractors, agents and representatives, to be exercised in a reasonable manner. This right of ingress and egress is granted for activities incidental or related to LESSEE'S approved activities, and for no other purposes except as may be approved in writing by LESSOR. This right is subject to federal, state and local security and safety requirements and standards. As required by Kansas state statute, it is understood and agreed that the Premises shall be used and occupied for aviation purposes or purposes incidental or related thereto and the primary purpose shall be for the operation of public air charter services and general office space of the LESSEE in the administration of its business.

LESSEE recognizes that other tenants now and hereafter may occupy other portions of the Airport, and that such other tenants shall have the right in common with LESSEE to use public roadways, streets, ramps, taxiways, runways, access gates, lighting, beacons, navigational aids, or other conveniences for aeronautical operations, and these common facilities are not under an exclusive use lease; and LESSEE shall conduct its operations in such a manner as to not impede access by others to these common facilities, nor in any other way interfere with, nor disrupt the business of other tenants or the quiet enjoyment of their leasehold interests at the Airport.

LESSOR reserves the right to grant and/or permit other parties the right to use any portion of the Airport, except that described in Section 1, Premises, for any permitted purpose, and upon any fair and non-discriminatory terms established by the LESSOR.

LESSEE, its affiliated entities, subsidiaries, employees, agents, representatives, contractors, and subcontractors, will not transact or otherwise engage in any other activities, business, and/or services on or from the Premises, except as described in this Agreement, unless such is provided for by a separate written approval, or amendment to this Agreement, and subject to approval by LESSOR.

The parties acknowledge that this lease is for office space, and does not include airfield access.

## **10. PROHIBITED USE OF PREMISES**

The Premises shall not be used for any purpose not expressly authorized in Section 9, Permitted Use of Premises. The following operations, services and concessions shall be specifically prohibited on or from the Premises or any other location at the Airport:

- (a) Commercial catering, restaurant and/or lounge concessions;
- (b) Commercial (for hire) ground transportation;
- (c) Commercial “paid” parking;
- (d) Commercial hotel or lodging;
- (e) Commercial outdoor advertising;
- (f) Sale of non-aviation products and services;
- (g) Revenue-producing communication systems or systems not directly applicable to LESSEE’s operations on the Premises;
- (h) Automobile rental service;
- (i) Any activity considered by LESSOR to not be aviation purposes or purposes incidental or related thereto.

## **11. LESSEE’S RIGHTS AND PRIVILEGES**

LESSEE shall have the following rights and privileges on the Premises and on the Airport:

- (a) The rights to install, operate, repair, and store upon the Premises all personal property and fixtures necessary for the conduct of LESSEE’s lawful business.
- (b) The right of ingress and egress to and from the Premises, which rights shall extend to LESSEE’s invitees, contractors, subcontractors, agents, representatives and employees; subject, however, to all reasonable security regulations;
- (c) The right in common with others authorized to do so, to use the common areas of the Airport.

## 12. LESSOR'S RIGHTS AND PRIVILEGES

LESSOR expressly reserves from the Premises:

- (a) Mineral Rights. All gas, oil and mineral rights in and under the soil.
- (b) Water Rights. All statutory, exempt, vested, and granted appropriation rights for the use of water, and all rights to request further appropriations for the Premises.
- (c) Airspace. A public right of flight through the airspace above the surface of the Premises. This public right of flight will include the right to cause or allow in said airspace, any noise inherent in the operation of any aircraft used for navigation or flight through said airspace or landing at, taking off from, or operation on the Airport. No liability on the part of LESSOR or any Tenant will result from the exercise of this right.
- (d) Navigational Aids. The right to install, maintain and modify and/or permit others to install, maintain and modify on the Premises visual and electronic navigational aids.
- (e) Entry and Inspection of Premises. The right of LESSOR, its authorized officers, employees, agents, contractors, subcontractors, authorized government agents, or other representatives to enter upon the Premises:
  - (1) To inspect at reasonable intervals during regular business hours upon reasonable prior notice (or any time in case of emergency or lawful investigation) to determine whether LESSEE has complied, and is complying with the terms and conditions of this Agreement;
  - (2) To inspect, during regular business hours upon reasonable prior notice, Premises, facilities, and equipment for compliance with laws, regulations and/or codes of the federal, state or local government, airport rules and regulations and airport standard operating procedures; and
  - (3) To construct or erect new facilities, or to perform maintenance, repair, or replacement relating to the Premises or any facility thereon, as may be required and necessary, but LESSOR shall not be obligated to exercise this option.
- (f) Radio/Wireless Communication Systems. The right to approve or withhold approval of any use of fixed RF Systems for the transmission of radio frequency signals in/on the Premises.
- (g) General Provisions. The right to exercise any and all rights set out in Section 41, General Provisions.
- (h) Signage. The right to enter onto the premises for installation, and the right to install any signage on the Premises required by law, order, rule, regulation, Airport Security Program or federal directive.

Provided that exercise by LESSOR of any such reserved rights (a) through (h) shall be without expense to the LESSEE and shall not unreasonably or materially interfere with LESSEE's use of



the Premises and shall not delay LESSEE in the exercise of its rights or the performance of its duties hereunder or increase the costs of such performance.

### **13. NON-INTERFERENCE WITH AIRPORT OPERATIONS**

LESSEE covenants and agrees that it shall not allow any condition on the Premises, nor permit the conduct of any activity on such Premises, which shall materially or adversely affect the development, improvement, operation, or maintenance of the Airport or its facilities, nor shall LESSEE use or permit the Premises to be used in any manner which might interfere with the landing and take-off of aircraft from the Airport or otherwise constitute a hazard to the general public, or to LESSOR's tenants or the customers, agents, invitees, contractors, representatives and employees of those tenants.

LESSEE covenants and agrees that it shall not allow any condition on the Premises, nor permit the conduct of any activity on such Premises, which shall materially or adversely affect, infringe upon, block or interrupt the operations and business activity of other airport tenant leaseholds.

### **14. COOPERATION WITH AIRPORT DEVELOPMENT**

LESSEE understands and agrees that LESSOR may pursue Airport development, improvements and maintenance activities from time-to-time that may affect the Premises and other areas of the Airport. LESSEE agrees to work cooperatively and in good faith with the LESSOR and other tenants and contractors in development, improvement and maintenance activities to minimize any disruptions. If requested by the LESSOR, LESSEE shall cooperate with and assist the LESSOR to the greatest extent possible in the development and implementation of any plans, designs, ingress/egress, or transition that may arise in connection with such Airport development, improvement, and maintenance activities. LESSOR may temporarily or permanently close, re-route, or consent to the closing or re-routing of any method of ingress or egress on the Airport, so long as the means of ingress and egress are reasonably equivalent to current access available to LESSEE. LESSOR may temporarily close the runway, taxiways, ramps or portions thereof for purposes of maintenance, replacement, re-construction or expansion. Provided that exercise by LESSOR of any such Airport development, improvement, or maintenance shall be without expense to the LESSEE and shall not unreasonably or materially interfere with LESSEE's use of the Premises, and shall not delay LESSEE in the exercise of its rights or the performance of its duties hereunder or increase the costs of such performance.

## **15. TITLE TO FACILITIES, IMPROVEMENTS AND FIXTURES**

It is understood and agreed that title to the Premises and to all existing and future structures, facilities, improvements and fixtures shall be, and shall remain, exclusively with LESSOR, the Wichita Airport Authority.

LESSEE shall, without cost to LESSOR, furnish and install all non-attached furniture, movable partitions, decorations, accessories, equipment, and tools necessary to conduct its business, which shall retain status as personal property even though temporarily affixed to the Premises. Title/ownership to non-attached personal property shall remain with LESSEE.

The term "fixtures", whenever used in this Agreement, shall be construed to include all structures and fixed systems and equipment erected or installed upon the Premises, all fencing, grading and pavement, all underground wires, cables, pipes, conduits, tanks, drains and drainages; and all other property of every kind and nature which is permanently affixed to the Premises, except LESSEE's personal property.

All facilities, structures and improvements, and alterations and additions to the Premises, excluding personal property of LESSEE, placed at the expense of LESSEE, shall remain upon and be surrendered with the Premises as a part thereof, on any termination of this Agreement, for any cause, and shall remain the property of the LESSOR.

## **16. LIENS**

LESSEE shall take or cause to be taken all steps that are required or permitted by law in order to avoid the imposition of any lien upon the Premises or any improvements thereon. Should any lien be placed on the Premises or any improvements thereon, LESSEE shall cause to be removed any and all liens of any nature. This obligation includes, but is not limited to, tax liens and liens arising out of or because of any financing, construction or installation performed by or on behalf of LESSEE or any of its contractors or subcontractors upon LESSEE's Premises or arising out of or because of the performance of any work or labor to it or them at said Premises or the furnishing of any materials to it or them for use at said Premises. Should any such lien be made or filed, LESSEE shall bond against or discharge the same within thirty (30) days after actual notice of the same from any source, whether from LESSOR or otherwise, and provide written proof of discharge or bonding to LESSOR within that time. LESSEE acknowledges that its interest in the Premises is a leasehold, and that notwithstanding its construction of improvements on the Premises, such improvements accrue to the LESSOR and that it has no equity interest in the Premises which can support a mortgage lien. LESSEE may not mortgage or pledge as

collateral its leasehold interest herein without the prior written consent of the LESSOR.

LESSOR may consent, upon LESSEE's written request, to an assignment of rents to a governmentally regulated and insured commercial lender as partial security for financing of LESSEE's activities on the Premises, which assignment is intended to be a present transfer to such lender of all of LESSEE's rights to collect and receive rents and charges from approved users, operators, sublessees and permittees. Lender(s) shall have no rights to assign this Agreement or sublease the Premises without the prior written consent of the LESSOR as required under Section 19, Assignment and Section 20, Subleasing, Permitting and Contracting. Upon LESSEE's written consent LESSOR agrees to give Lender(s) notice of any default or cancellation of the Agreement, and allow Lender(s) the same opportunity as the LESSEE under the Agreement to correct any condition or cure any default. Nothing in this Section is intended to relieve the LESSEE of its obligations under this Agreement.

## **17. TAXES, LICENSES AND PERMITS**

LESSEE shall promptly pay all taxes, excises, license fees and permit fees of whatever nature applicable to its operation or lease of the Premises. LESSEE may elect, however, at its own cost and expense, to contest any such tax, excise, levy, or assessment. LESSEE will keep current all Federal, State or local licenses, operating certificates or permits required for the conduct of its operations. LESSEE represents and warrants to LESSOR that it has obtained all license, franchise, operating certificates or other agreements or permits necessary to operate LESSEE's operation in accordance with the terms of this Agreement, and LESSEE covenants to keep all such licenses, franchises, permits, operating certificates and other agreements in full force and effect during the Term of this Agreement.

LESSEE shall pay all lawful taxes and assessments which, during the term hereof, may become a lien upon or which may be levied by the State, County, City or any other tax levying body, upon the leased Premises or upon any taxable interest of LESSEE acquired in this lease agreement, or any taxable possessory right which LESSEE may have in or to the leased Premises, including any improvements or facilities located on the Premises, as well as LESSEE shall also pay all lawful taxes and assessments on taxable property, real or personal, owned by LESSEE in and about said Premises. Nothing in this Section shall prevent LESSEE from contesting the legality, validity or application of any such tax or assessment to the full extent LESSEE may be lawfully entitled so to do.

## **18. UTILITIES**

The cost of electricity, gas, and water shall be included as a part of the lease rental rate. Any other costs, such as telephone and cable, but not limited to these, shall be at LESSEE's initiation and expense. LESSOR shall not be liable to LESSEE for damages arising out of any cessation or interruption of gas, water, electricity, telephone, or other utility service during the lease term or any extension thereon. LESSOR shall take reasonable steps to promptly restore such services.

LESSOR is the only entity allowed to install or remove any cabling. Cabling includes, but is not limited to, any type of telecommunications or network cable such as CAT3, CAT5, CAT6; fiberoptics cable; and/or coaxial cable. Cabling for basic phone service shall be provided as part of the rental rate. However, should additional network cable, coaxial for security or fiber optic cable, be required for LESSEE's operation, LESSEE shall be required to make arrangements with LESSOR, and such installation shall be at LESSEE's expense. It shall be LESSEE's responsibility to contract for services using such cables from LESSEE's preferred service provider.

Unless otherwise agreed upon in writing, if LESSEE requires utilities beyond that currently provided or that are available to be extended to the Premises boundary, LESSEE agrees to pay the full cost and expense associated with the upgrade/extension/installation of all such utilities related to its use of the Premises, and to comply with all provisions for maintaining such utilities.

The LESSOR reserves for itself the right to upgrade, extend, install, maintain and repair all utilities and services on or across the Premises, whether or not such services or utilities are for the benefit of LESSEE. The LESSOR shall take all reasonable care and diligence to protect existing improvements and utilities, and shall avoid to the greatest extent possible any unreasonable interference or interruption to LESSEE's operations.

All electrical, data and communications utilities installed or caused to be installed shall be underground, and no utility services or other cables or wires shall be installed on poles or otherwise above ground. Unless otherwise provided in this Agreement, all utilities and conduits or ducts installed by anyone on the Premises shall be considered fixtures as defined under Section 15, Title to Facilities, Improvements and Fixtures, and shall become the owned property of LESSOR.

Wastes not legally permitted and authorized for disposal into the storm and/or sanitary drainage system shall not be discharged, connected or introduced into storm and/or sanitary drains and the storm and/or sanitary drainage system. LESSEE shall take all reasonable precautions to prevent the discharge of material into any drainage system that would create interference with the flow

therein, or that would cause a hazard or unlawful contamination thereto.

## **19. ASSIGNMENT**

With the exception of assignment to a parent or “holding” company or subsidiary, LESSEE shall have no right to assign or delegate any of its rights or duties pursuant to this Agreement without the prior written consent of LESSOR. Any assignment or delegation so made and so permitted shall be subject to all terms, conditions and other provisions of this Agreement. Any attempted assignment or delegation in violation of this provision shall be void and have no force or effect whatsoever.

## **20. SUBLEASING, PERMITTING AND CONTRACTING**

LESSEE shall not sublease, rent or permit any persons, firms or corporations to occupy any part of the Premises, or to provide any type of commercial or non-commercial operation, aviation or otherwise, on the Premises without having first received the prior written consent of LESSOR, granted only under the following conditions:

(a) Any arrangements must be in the form of a written instrument and must be for purposes and uses of the Premises as authorized under this Agreement, and shall be subject to the provisions of this Agreement. LESSEE shall submit a copy of such proposed instrument at the time of requesting consent of LESSOR.

(b) All sublease(s) must comply with Sections 9, 10, 11, and 12 of this Agreement, and will be reviewed for compliance by LESSOR to that end. Any arrangement for the subleasing of space must be in conformance with the use of the Premises outlined in this Agreement, unless expressly approved otherwise in writing by LESSOR.

(c) LESSEE must keep current records on file and available for LESSOR’s inspection, that describes the nature and document the legitimacy of the sublessee’s business, including all current municipal, state, or local licenses or permits required for the conduct of sublessee’s business.

(d) LESSEE hereby agrees that it shall incorporate language acceptable to LESSOR into all of its sublease agreements, placing on any sublessee and that sublessee’s affiliated entities, customers, employees, invitees, contractors, and subcontractors similar restrictions, as may be appropriate to its approved uses as those which bind LESSEE and its use of the facility through this Agreement. LESSEE shall also incorporate and make reference to this Agreement, as may be amended from time to time, to ensure sublessee’s operations and conduct are subject to and are in compliance with the terms and conditions of this Agreement, as may be amended from time to time. Any sublease agreement shall explicitly state that it is subordinate to this Agreement, and that the sublessee shall never obtain rights in the Premises greater than those

held by LESSEE under this Agreement, as amended. Any sublessee shall be specifically subject to eviction from the Premises as a result of termination, cancellation, or expiration of this Agreement, irrespective of sublessee's state of compliance with the terms of its sublease.

(e) LESSEE shall at all times during the term(s) of approved sublease(s), remain responsible to LESSOR for the compliance of its sublessees with the terms and conditions of any approved sublease and with this Agreement. LESSOR may look to LESSEE directly to satisfy any failure of sublessee to comply with these documents.

(f) Consent to one sublease permit or subcontract shall not be deemed consent to any subsequent sublease permit or subcontract. Prior written consent of the LESSOR shall be required for each sublease permit or subcontract executed by the LESSEE.

## **21. LIABILITY INSURANCE**

LESSEE shall procure, maintain and carry, at its sole cost, in accordance with and/or until completion of this Agreement all insurance, as required per the amounts as set forth below. Insurance shall be furnished by a company licensed to do business in Kansas.

Insurance certificates shall be issued on a standard ACORD form and include the NAIC number of the insuring company. Each insurance company's rating, as shown in the latest Best's Key Rating Guide, shall be no less than A-VII, unless otherwise approved by the LESSOR, or from a Workers' Compensation pool approved by the State of Kansas. Insurance certificates must be received and approved by the LESSOR prior to occupancy.

Should any of the described policies in this Agreement be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. The LESSOR reserves the right to request and receive for review certified copies of any and all insurance policies to which this Agreement is applicable prior to commencement of work. The failure of LESSOR to reject the LESSEE'S certificate of insurance shall not be deemed to constitute an acceptance by the LESSOR of a deficient certificate of insurance. If the LESSEE fails to procure or maintain any of the specified coverages the LESSOR has the right, but not the obligation, to secure the coverage and charge the cost to the LESSEE along with a 20% administrative fee.

The LESSEE shall be responsible for determining the types and limits of insurance coverage required by any approved sublessee. At a minimum, such sublessee shall carry Workers' Compensation, commercial general liability (minimum of \$1,000,000 per occurrence) and commercial automobile liability (minimum of \$1,000,000 combined single limit). LESSEE shall require in any approved sublease that the Wichita Airport Authority and the City of Wichita shall be added as primary and non-contributory additional insureds on the sublessee's commercial general liability policy.

The requirements, procurement and carrying of the required insurance shall not limit any of the LESSEE's obligations or liability under this Agreement or as a matter of law.

Where "minimum limits" of insurance are specified in this Section, such minimum insurance limits are required and considered by LESSOR to be the lowest insured amounts acceptable under this Agreement. The LESSEE is not limited or restricted whatsoever in securing additional insurance coverage and higher insured limits than those specified herein if, at the LESSEES determination and discretion and commensurate with the type of activity and associated business and operational risk, additional coverage and higher limits are necessary and appropriate.

Insurance shall include the following terms, conditions and minimum limits:

a) WORKERS' COMPENSATION

LESSEE shall maintain Workers' Compensation insurance to cover the statutory requirements of the Workers' Compensation laws of the State of Kansas for its operations on the Premises, and when applicable, to Federal Laws and Voluntary Compensation and Employer's Liability (including occupational disease) coverage. In the alternate, LESSEE may provide an appropriate statutory waiver.

b) COMMERCIAL GENERAL LIABILITY

LESSEE shall maintain Commercial General Liability Insurance on an occurrence form. Coverage shall include on-going operations, product/completed operations (minimum of two years following the project completion) and Personal and Advertising Injury. Minimum limits, as outlined herein, shall be:

General Aggregate (per project)	\$1,000,000
Products/Completed Operations	\$1,000,000
Personal and Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000

The Wichita Airport Authority and the City of Wichita shall be added as primary and non-contributory additional insureds with respect to LESSEE's operations.

## **22. ALL RISK PROPERTY INSURANCE**

LESSOR, at its expense, throughout the term of this Agreement, shall cause the structures, facilities, improvements and fixtures on the Premises to be insured against loss or damage by fire or other casualty equal to the full replacement value thereof and by an all risk coverage policy furnished by a company licensed to do business in Kansas. Such policy shall not exclude, or in the alternative, shall carry full coverage endorsements for damage from tornado, hail, flood, and sewer backup. The proceeds of any payments made under such insurance policy or policies shall be used to rehabilitate or reconstruct the insured facilities, subject to the provisions governing damage or destruction found at Section 37, Damage or Destruction.

## **23. SUBROGATION OF INSURANCE**

LESSOR hereby waives any and all rights of recovery against LESSEE for or arising out of damage or destruction of the building, or the demised Premises, or any other property of LESSOR, from causes then included under any of its property insurance policies, to the extent such damage or destruction is covered by the proceeds of such policies, whether or not such damage or destruction shall have been caused by the negligence of LESSEE, its agents, servants or employees or otherwise, but only to the extent that its insurance policies then in force permit such waiver without diminution of LESSOR coverage.

LESSEE hereby waives any and all rights of recovery against LESSOR for or arising out of damage to or destruction of any property of LESSEE from causes then included under any of its property insurance policies, to the extent such damage or destruction is covered by the proceeds of said policies, whether or not such damage or destruction shall have been caused by the negligence of LESSOR, its agents, servants or employees or otherwise, but only to the extent that its insurance policies then in force permit such waiver.

## **24. LOSS OF PERSONAL PROPERTY**

Any personal property of LESSEE or others placed in or upon the Premises shall be at the sole risk of the LESSEE, and LESSOR shall not be responsible or liable for any loss, damage and replacement thereto, regardless of the cause of such loss or damage, and the LESSEE waives all rights of subrogation against recovery from the LESSOR for such loss or damage unless such loss or damage is the result of the LESSOR's negligence.



## **25. CANCELLATION BY LESSOR**

The LESSOR, in addition to any other rights to which it may be entitled by law or otherwise, may cancel this Agreement by giving LESSEE written notice in the event of default by LESSEE under this Agreement continuing for more than sixty (60) days after the LESSEE's receipt of written notice of such event of default and opportunity to cure from the LESSOR, upon or after the happening of any one of the following events:

- (a) LESSEE shall file a voluntary petition in bankruptcy or that proceedings in bankruptcy shall be instituted against it and LESSEE is thereafter adjudicated bankrupt pursuant to such proceedings;
- (b) A court shall take jurisdiction of LESSEE and its assets pursuant to proceedings brought under the provisions of any Federal reorganization act;
- (c) Receiver of LESSEE's assets shall be appointed;
- (d) LESSEE shall be divested of its estate herein by other operation of law;
- (e) LESSEE shall fail to perform, keep and observe any of the obligations, terms, warranties or conditions contained in this Agreement that on the part of LESSEE are to be performed, kept or observed.

If any such condition or default cannot reasonably be corrected within the 60-day period and LESSEE has demonstrated due diligence with respect to curing said default, then, at the LESSOR's sole discretion, such cure period may be extended for consecutive periods of 30 days, as long as diligent progress is made toward cure, with a reasonably foreseeable resolution date. Under such circumstances, default may be treated as cured until cured. Should diligent progress cease, or the reason for default become apparent as insoluble, then the term shall cease and expire at the end of the 30-day extension then in effect.

Acceptance of rental by LESSOR for any period or periods after a notice of default is issued by LESSOR of any of the obligations, terms, warranties and conditions herein contained to be performed, kept and observed by LESSEE shall not be deemed a waiver of any other right on the part of LESSOR to cancel this Agreement for failure by LESSEE so to perform, keep and observe any of the obligations, terms, warranties, or conditions hereof to be performed, kept and observed. No waiver of default by LESSOR of any of the obligations, terms, warranties or conditions hereof to be performed, kept and observed by LESSEE, shall be construed to be or act as a waiver of any subsequent default of any of the obligations, terms, warranties or conditions herein contained to be performed, kept and observed by LESSEE.

## **26. CANCELLATION BY LESSEE**

The LESSEE, in addition to any other rights to which it may be entitled by law or otherwise, may cancel this Agreement by giving LESSOR written notice in the event of default by LESSOR under this Agreement continuing for more than sixty (60) days after the LESSOR's receipt of written notice of such event of default and opportunity to cure from the LESSEE, upon or after the happening of any one of the following events:

(a) Issuance by any court of competent jurisdiction of a permanent injunction in any way preventing or restraining the use of the Airport or any major part thereof for Airport purposes and the remaining in full force of such permanent injunction for a period of at least one hundred eighty (180) days.

(b) Inability of the LESSEE to use, for a period in excess of one hundred eighty (180) days, the Airport or any part of the facility because of any law, order, rule, regulation or other action or non-action of the Federal Aviation Administration or any other governmental authority, or because of fire, earthquake, other casualties or acts of God or the public enemy.

(c) LESSOR shall fail to perform, keep and observe any of the obligations, terms, warranties or conditions contained in this Agreement that on the part of LESSOR are to be performed, kept or observed:

- i. LESSEE may give LESSOR written notice to correct such condition or cure such default, and if any such condition or default shall continue for sixty (60) days after receipt of such notice by LESSOR, LESSEE may terminate this Agreement and the term hereof shall cease and expire at the end of such sixty (60) days in the same manner and to the same effect as if it were the expiration of the Initial or Option Term, unless such condition or default cannot reasonably be corrected within the 60-day period and LESSOR has demonstrated due diligence with respect to curing said default, then such cure period may be extended for consecutive periods of 30 days, as long as diligent progress is made toward cure, with a reasonably foreseeable resolution date. Under such circumstances, default may be treated as cured until cured. Should diligent progress cease, or the reason for default become apparent as insoluble, then the term shall cease and expire at the end of the 30-day extension then in effect;

(d) Assumption by the United States Government or any other authorized agency thereof of the operation, control or use of the Airport and the facility herein described, or of any substantial part or parts thereof in such a manner as to substantially restrict the LESSEE for a period of one hundred eighty (180) days from operating on and within the facility.

(e) In the event of destruction of the facilities, improvements, or the demised Premises as more fully described in Section 37, Damage or Destruction.

## **27. MAINTENANCE AND REPAIR**

LESSEE, at its sole expense, shall at all times keep and maintain said Premises in a clean and sightly condition, free of trash, debris and obstructions.

LESSEE shall maintain and keep in repair at its own expense the interior of said Premises, keeping the same in proper condition, including painting, light bulb replacement, carpet cleaning and any other minor repairs required to keep the Premises in proper condition.

LESSOR shall be responsible for structural repairs to the building (including walls and foundation), ballast replacement and for damages to property or equipment covered by insurance.

LESSOR, its agents or employees, shall have the right to enter upon said Premises at any and all reasonable times to inspect the condition of the same. Should LESSEE, refuse or neglect to maintain its Premises as herein provided, LESSOR shall have the right to perform such maintenance on behalf of and for the LESSEE after thirty days written notice to LESSEE. Any costs for such maintenance shall be paid for by LESSEE, not later than thirty (30) days following demand by LESSOR for such payment at LESSOR's costs, plus twelve percent (12%) as administrative reimbursement to LESSOR.

Notwithstanding any other provisions in this Lease, LESSOR hereby represents and warrants that all electrical, plumbing, heating and air conditioning and mechanical systems located at the Premises are in good working condition upon commencement of this Lease. LESSOR shall keep same in good working condition.

## **28. EXTERIOR SIGNS AND ADVERTISING**

LESSEE agrees that no signs or advertising material shall be erected on the Premises or on any improvement or facility on the Premises unless the design and layout of such signs and advertising material, together with the materials and method of construction of such signs and advertising material, shall have been approved in advance in writing by LESSOR, which approval shall not be unreasonably withheld or unduly delayed.

LESSEE shall not erect, install, operate, nor cause or permit to be erected, installed, or operated upon any non-leased Premises of the Airport property, any signs, banners, or other similar devices for its own business, or the business of others. This provision shall not have the effect of limiting or restricting LESSEE's right to enter into an agreement with LESSOR'S authorized and permitted marketing, advertising or signage agency for the display of informational, marketing or advertising media at approved designated locations on Airport property.

## **29. PORTABLE STORAGE CONTAINERS/STRUCTURES**

Unless specifically approved in writing, and under conditions specified by LESSOR, LESSEE shall not place or allow to be placed upon Premises, any type of portable storage container, trailer, unit, box, or barrel which is used to store merchandise and/or equipment and supplies outside of an enclosed permanent building or structure, which does not qualify as a building or structure under Title 18 of the Code of the City of Wichita. Unless specifically approved, and under conditions specified by LESSOR, LESSEE shall not place or allow to be placed upon Premises, any type of portable or temporary structure, trailer, mobile home, modular structure or device.

LESSOR will not unreasonably withhold approval of such container(s) and structure(s) if such is of a temporary nature for the purpose of supporting construction, alteration or improvement activity, or other approved project.

## **30. GRANTING OF EASEMENTS**

LESSEE shall not (i) grant easements, licenses and other rights or privileges in the nature of easements with respect to the land, or (ii) release existing easements, licenses, right-of-ways and other rights or privileges, and LESSEE agrees, to the extent that it may legally do so, that it will execute and deliver any instrument necessary or appropriate to confirm and grant or release any such easement, license, right-of-way or other right or privilege or any such agreement or other arrangement, upon receipt by LESSEE of (a) a copy of the instrument of grant or release or of the agreement or other arrangement, and (b) a written application signed by the LESSOR requesting execution and delivery of such instrument, provided that, such grant or release is not detrimental to the proper conduct of the business of LESSEE, and such grant or release will not impair the effective use or interfere with the efficient and economical operation of the facilities. LESSEE shall not request any payment or other consideration for such execution, the same being amply supported by the promises exchanged in this Agreement. Any payments or other consideration received by LESSOR for any such grant or with respect to or under any such agreement or other arrangement shall be and remain the property of LESSOR. The obligations of this Section shall survive termination of this Agreement.

### **31. RULES AND REGULATIONS**

LESSEE, its agents and employees, shall be subject to any and all applicable rules, regulations, Airport Standard Operating Procedures, orders and restrictions which are now in force or which may hereafter be adopted by the Wichita Airport Authority or the City of Wichita, Kansas, in respect to the operation of the Airport; and shall also be subject to any and all applicable laws, statutes, rules, regulations or orders of any governmental authority, federal or state, lawfully exercising authority over the Wichita Mid-Continent Airport or LESSEE's operations conducted hereunder.

LESSOR shall not be liable to LESSEE for any diminution or deprivation of its rights hereunder on account of the exercise of any such authority as in this Section provided, nor shall LESSEE be entitled to terminate this Agreement by reason thereof unless exercise of such authority shall so interfere with LESSEE's exercise of the rights hereunder as to constitute a termination of this Agreement by operation of law in accordance with the laws of the State of Kansas, or as set out in Section 26, Cancellation By Lessee.

### **32. ENCROACHERS, TRESPASSERS AND OTHER THIRD PARTY HAZARDS**

LESSEE shall lawfully remove, or cause to be removed by LESSOR or other official law enforcement agency, all encroachers, trespassers and other third parties violating laws of the federal, state or local government, or who are not on the Premises for legitimate purposes.

### **33. FIRE EQUIPMENT AND SYSTEMS**

LESSOR shall furnish and maintain on the Premises sufficient smoke detectors, portable fire extinguishing equipment and sufficient fire suppression as maybe required by city code and insurance underwriters.

### **34. ENVIRONMENTAL COVENANTS**

(a) The LESSEE hereby covenants that it will not cause or permit any Hazardous Substances to be placed, held, located, or disposed of, on, under or at the Premises, other than in the ordinary course of business and in compliance with all applicable laws.

(b) In furtherance and not in limitation of any indemnity elsewhere provided in this Agreement to the LESSOR, the LESSEE hereby agrees to indemnify and hold harmless the LESSOR and the City of Wichita from and against any and all losses, liabilities, including strict liability, damages, injuries, expenses, including reasonable attorneys' fees, costs of any settlement or judgment and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against, the LESSOR or the City of Wichita by any person or entity for or arising out of the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, discharging or release from the Premises during any term of this lease of any Substance (hazardous or otherwise) regulated by any applicable statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability, including strict liability, or standards of conduct concerning, any Hazardous Substance (including, without limitation, any losses, liabilities, reasonable attorneys' fees, costs of any settlement or judgment or claims asserted or arising under the Comprehensive Environmental Response, Compensation and Liability Act, any federal, state or local so-called "Superfund" or "Super lien" laws), if such presence, escape, seepage, leakage, spillage, discharge, emission was caused by the LESSEE, or persons within the control of the LESSEE, its officers, employees, agents, contractors, invitees and/or licensees, or if such Substance (hazardous or otherwise) was owned by, or located on the Premises by, the LESSEE (without regard to the actual cause of any escape, seepage, leakage, spillage, discharge, emission or release).

(c) If, during the term of this Agreement, the LESSEE receives any notice of (i) the happening of any event involving the use (other than in the ordinary course of business and in compliance with all applicable laws), spill, release, leak, seepage, discharge or cleanup of any Substance (hazardous or otherwise) on the Premises or in connection with the LESSEE's operations thereon or (ii) any complaint, order, citation or notice with regard to air emissions, water discharges, or any other environmental, health, or safety matter affecting the LESSEE from any persons or entity (including, without limitation, the United States Environmental Protection Agency (the "EPA") or the Kansas Department of Health and Environment ("KDHE")), the LESSEE shall immediately notify the LESSOR in writing of said notice.

(d) The LESSOR shall have the right, but not the obligation, and without limitation of the LESSOR's other rights under this Agreement, to enter the Premises or to take such other actions as deemed necessary or advisable to inspect, clean up, remove, resolve or minimize the impact of, or to otherwise deal with, any Substance (hazardous or otherwise) or environmental complaint following receipt of any notice from any person, including, without limitation, the EPA or KDHE, asserting the existence of any Substance (hazardous or otherwise) or an environmental complaint pertaining to the Premises or any part thereof which, if true, could result in an order,

suit or other action against the LESSEE and/or which, in the reasonable judgment of the LESSOR, could jeopardize its interests under this Agreement. If such conditions are caused by circumstances within the control of the LESSEE or if such circumstances result from a Substance (hazardous or otherwise) owned by, or located on the Premises by, the LESSEE (without regard to the actual cause of any escape, seepage, leakage, spillage, discharge, emission or release) all reasonable costs and expenses incurred by the LESSOR in the exercise of any such rights shall be payable by the LESSEE, within 15 days of written demand by Landlord.

(e) If an event of default shall have occurred and be continuing, the LESSEE at the request of the LESSOR shall periodically perform, at the LESSEE's expense, an environmental audit and, if reasonably deemed necessary by the LESSOR, an environmental risk assessment, of the Premises, or the hazardous waste management practices and/or hazardous waste disposal sites used by the LESSEE with respect to the Premises. Such audits and/or risk assessments shall be conducted by an environmental consultant satisfactory to the LESSOR, and all environmental audits and environmental risk assessments must be reasonable satisfactory to the LESSOR. Should the LESSEE fail to perform any such environmental audit or risk assessment within 90 days of the written request of the LESSOR, the LESSOR shall have the right, but not the obligation, to retain an environmental consultant to perform any such environmental audit or risk assessment. All costs and expenses incurred by the LESSOR in the exercise of such rights shall be payable by the LESSEE on demand.

(f) Neither LESSEE nor LESSOR shall install or permit to be installed in the Premises friable asbestos, electrical equipment containing polychlorinated biphenyls (PCBs), or any Substance containing asbestos and deemed hazardous by federal or state regulations applicable to the Premises and respecting such material. The LESSEE shall defend, indemnify, and save the LESSOR and the City of Wichita harmless from all costs and expenses (including consequential damages) asserted or proven against the LESSEE by any person, as a result of the presence of said Substances, and the costs of any removal or compliance with such regulations, if said Substance was installed by the LESSEE, or persons within its control.

(g) Subject to any limitations or restrictions imposed by the Kansas Budget Law or Cash Basis Law, the LESSOR hereby agrees to indemnify and hold harmless the LESSEE from and against any and all losses, liabilities, including strict liability, damages, injuries, expenses, including reasonable attorneys' fees, costs of any settlement or judgment and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against, the LESSEE by any person or entity for, arising out of, the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, discharging or release from the Premises during the term of this Agreement and the period prior to the term of this Agreement of any Substance (hazardous or otherwise) (including, without limitation, any losses, liabilities, reasonable attorneys' fees, costs of any settlement or judgment or claims asserted or arising under the Comprehensive Environmental Response, Compensation and Liability Act, any federal, state or local so-called "Superfund" or "Super lien" laws, or any other applicable statute, law, ordinance, code, rule, regulation, order of decree regulating, relating to or imposing liability, including strict liability, or

standards of conduct concerning any Hazardous Substance) unless such presence, escape, seepage, leakage, spillage, discharge, emission or release was caused by the LESSEE, or persons within the control of the LESSEE, its officers, employees, agents, invitees and/or licensees, or if such Substance (hazardous or otherwise) was owned by, or placed upon the Premises by, the LESSEE (without regard to the actual cause of any escape, seepage, leakage, spillage, discharge, emission or release except to the extent such was caused by the LESSOR).

Environmental compliance shall not be limited to those items noted within this lease but shall include any current or future federal, state, or local law, statute or regulation, that may be required of LESSEE's operation (storage or use of Substances (hazardous or otherwise), activities of LESSEE's employees or contracted vendor's etc.). Tenant shall provide LESSOR upon request copies of any plan, training program, training records, material safety data sheet or any other documentation required by said laws.

(h) The provisions of this article shall survive the termination of this Agreement.

### **35. IMPOSITIONS**

LESSEE shall, during the life of this Agreement, bear, pay and discharge, before the delinquency thereof, any and all impositions, including all lawful taxes and assessments imposed on the Premises, personal property thereon, or LESSEE's possessory right therein. In the event any impositions may be lawfully paid in installments, LESSEE shall be required to pay only such installments thereof as become due and payable during the life of this Agreement as and when the same become due and payable. LESSOR covenants that without LESSEE's written consent it will not, unless required by law, take any action intended to cause or induce the levying or assessment of any imposition (other than special assessments levied on account of special benefits or other impositions for benefits or services uniformly imposed) which LESSEE would be required to pay under this Section and that should any such levy or assessment be threatened or occur LESSOR shall, at LESSEE's request, fully cooperate with LESSEE in all reasonable ways to prevent any such levy or assessment. Nothing herein contained shall prevent LESSEE from contesting the legality, validity, or application of any such tax or assessment to the full extent LESSEE may be lawfully entitled to do so.



### **36. INDEMNITY**

Subject to the waiver of subrogation provisions of this Lease, LESSEE, shall protect, defend and hold LESSOR and the City of Wichita and its officers, agents and employees completely harmless from and against any and all liabilities, losses, suits, claims, judgments, fines or demands arising by reason of injury or death of any person or damage to any property, including all reasonable costs for investigation and defense thereof (including but not limited to attorney fees, court cost and expert fees), of any nature whatsoever arising out of or incident to this Agreement and/or the use or occupancy of the Premises or the acts or omissions of LESSEE's officers, agents, employees, contractors, subcontractors, licensees or invitees, regardless of where the injury, death or damage may occur, except to the extent such injury, death or damage is caused by the negligence of LESSOR. The LESSOR shall give to LESSEE reasonable notice of any such claims or actions.

Subject to the provision of the Kansas Tort Claims Act, and the waiver subrogation provisions of this Lease, LESSOR shall protect, defend and hold LESSEE, its officers, agents and employees completely harmless from and against all liabilities, losses, suits, claims, judgments, fines or demands arising by reason of injury to or death of any person or damage to any property, including all reasonable costs for investigation and defense thereof (including but not limited to attorney fees, court costs and expert fees), of any nature whatsoever arising out of or incident to this agreement and/or the use or occupancy of the Premises or the acts of omissions of LESSOR's officers, agents, employees, contractors, subcontractors, licensees or invitees, regardless of where the injury, death or damage is caused by the negligence of LESSEE. The LESSEE shall give LESSOR reasonable notice of any such claims or actions.

The provisions of this Section shall survive the expiration or termination of this Agreement to the extent that they relate to liabilities, losses, suits, claims, judgments, fines or demands arising from or incident to events occurring during LESSEE'S occupancy of the Premises. The LESSEE shall use counsel reasonably acceptable to LESSOR in carrying out its obligations in this Section.

### **37. DAMAGE OR DESTRUCTION**

In the event that facilities or improvements on the Premises are damaged or destroyed in whole or in part by fire, lightning or any other peril or other casualty during the term of this Agreement, this Agreement shall remain in full force and effect and LESSEE shall proceed with due diligence to repair, restore, rebuild or replace said damaged or destroyed property or parts thereof to as good a condition as all affected properties were in immediately prior to such damage or destruction, subject to such alterations as LESSEE may elect to make and are permitted in this Agreement. All proceeds from the insurance policies related to such damage or destruction shall be applied to cover the cost of such repairs or restoration.

In the event the improvements are damaged or destroyed in whole or in part by fire, lightning or any other peril or casualty not resulting in whole or in part from the actions of the LESSEE during the term of this Agreement, and such damage, destruction or loss exceeds fifty five percent (55%) of the value of the property as it existed prior to the casualty loss, LESSEE shall have the election, indicated by written notice given to LESSOR within 180 days after the occurrence of such event, not to repair, restore, rebuild or replace the improvements. Upon such election by LESSEE, this Agreement shall be terminated effective as of the date such notice is given by LESSEE, and neither party shall have any further rights or obligations pursuant to this Agreement other than LESSEE'S obligation to satisfy damages arising from any negligent or intentional action of itself, its employees, agents or invitees to the extent not covered by insurance proceeds. All of the insurance proceeds shall be paid to LESSEE and LESSOR in pro-rata distributions as their interests may appear based upon the fair market value of each party's interest at the time the proceeds are received. Where allowed by the insurance policy, insurance proceeds shall first be applied to removal of damaged improvements from the Premises before such distribution.

### **38. CONDEMNATION**

If, during the term, title to, or the temporary use of, all or any part of the Premises shall be condemned by any authority exercising the power of eminent domain, LESSEE shall, within fifteen (15) days after the date of entry of a final order in any eminent domain proceedings granting condemnation, notify LESSOR in writing as to the nature and extent of such condemnation and whether it is practicable for LESSEE to acquire or construct substitute improvements, or whether LESSEE shall elect to terminate this lease.

If LESSEE shall determine that such substitution is practicable and desirable and LESSOR shall agree thereto, LESSEE shall forthwith proceed with and complete with reasonable dispatch the acquisition or construction of such substitute improvements. In such case, any net proceeds received from any award or awards with respect to the Premises or any part thereof made in such condemnation or eminent domain proceeds shall be used and applied for the purpose of paying the cost of such substitution. Any proceeds not required for such costs shall be distributed to the parties in pro-rata distributions as their interests may appear based upon Agreement term remaining and the fair market value of each party's interest at the time the proceeds are received.

If LESSEE shall determine that it is not practicable and desirable to acquire or construct substitute improvements, any net proceeds shall be distributed to the parties in pro-rata distributions as their interests may appear based upon the Agreement term remaining, and the fair market value of each party's interest at the time the proceeds are received.

LESSOR shall cooperate fully with LESSEE in the handling and conduct of any prospective or pending condemnation proceedings with respect to the Premises or any part thereof. In no event will LESSEE or LESSOR voluntarily settle or consent to the settlement of any prospective or pending condemnation proceedings with respect to the Premises without the mutual agreement and written consent of the other party to this Agreement.

### **39. MODIFICATIONS FOR GRANTING FAA FUNDS**

In the event that the LESSOR determines the Federal Aviation Administration requirements call for modifications or changes to this Agreement as a condition precedent to granting of funds for the improvement of the Airport, these modifications or changes shall supersede this Agreement and LESSEE agrees to consent to such amendments, modifications, revisions, supplements or deletions of any of the terms, conditions or requirements of this Agreement as may be reasonably required by the LESSOR to fully comply with federal grant assurances and directives and to obtain Federal Aviation Administration grants-in-aid, provided that no such changes shall materially alter the rights or obligations of LESSEE hereunder.

### **40. NONDISCRIMINATION**

The LESSEE agrees that it will not discriminate or permit discrimination against any person on the basis of race, color, sex, religion, disability, age (except where age is a bona fide occupational qualification), national origin or ancestry in its operations or services, and its use or occupancy of property under this Agreement. The LESSEE agrees to comply with all applicable provisions of federal and state laws, regulations, or executive orders prohibiting discriminatory conduct.

### **41. GENERAL PROVISIONS**

**Facility Development.** LESSOR reserves the right to further develop or improve the landing area or any other area, building or other improvement within the present or future boundaries of Airport as it sees fit in its sole judgment regardless of the desires or view of LESSEE and without interference or hindrance by LESSEE. Further, LESSOR retains the absolute right to maintain, repair, develop and expand or replace the terminal building, utilities, ramps, taxiways, runways, streets, roadways, sidewalks, any other airport facility, airport improvement or airport property free from any and all liability to LESSEE for loss of business or damage of any nature whatsoever as may be occasioned during or because of the performance of such maintenance, repair, development, expansion or replacement.

**Maintenance, Repair, Direction and Control.** LESSOR reserves the right, but is not obligated to exercise the right, to maintain and keep in repair the landing area of the Airport and all publicly owned facilities of the Airport, together with the right to direct and control all activities of LESSEE in this regard. These areas will include, but are not limited to, those areas which are necessary to serve the aeronautical users of the Airport, except that LESSOR will not be obligated to maintain and keep in repair such areas of the Airport as may be leased to or under the control of Airport tenants, whether such area serves aeronautical users or otherwise.

**Operation of Airport by the United States of America.** This Agreement and all the provisions hereof will be subject to whatever right the United States of America now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of said Airport or the exclusive or nonexclusive use of the Airport by the United States during the time of war or national emergency.

**14 CFR Part 77 of Federal Aviation Regulations.** LESSEE agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event future construction of a building, structure, or attachment thereto is planned for the Premises, or in the event of any planned modification or alteration of any present or future building or structure situated on the Premises. LESSEE by accepting this Agreement expressly agrees for itself, its successors and assigns, that it will not erect nor permit the erection of any structure or object, nor permit the growth of any tree on the Premises which will exceed such maximum height as may be stipulated by LESSOR. It is understood and agreed that applicable laws, codes, regulations or agreements concerning height restrictions will govern the maximum height to be stipulated by LESSOR. In the event the aforesaid covenants are breached, LESSOR reserves the right to enter upon the Premises and to remove the offending structure or object, and cut down the offending tree, all of which will be at the expense of LESSEE and without liability to LESSOR.

**Airspace.** There is hereby reserved to LESSOR, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Premises. This public right of flight will include the right to cause or allow in said airspace, any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from or operation on the Airport. No liability on the part of LESSOR will result from the exercise of this right.

**Easement for Flight.** LESSEE releases LESSOR from any present or future liability whatsoever and covenants not to sue LESSOR for damages or any other relief based directly or indirectly upon noise, light, vibrations, smoke, fumes, odors, air currents, electronic or other emissions occurring as a result of aviation or airport related operations at or otherwise associated with the Airport. This release and covenant includes but is not limited to claims for damages for physical

or emotional injuries, discomfort, inconvenience, property damage, death, interference with use and enjoyment of property, nuisance, or inverse condemnation or for injunctive or other extraordinary or equitable relief. It is further agreed that LESSOR shall have no duty to avoid or mitigate such damages by, without limitation, setting aside or condemning buffer lands, rerouting air traffic, erecting sound or other barriers, establishing curfews, noise or other regulations, relocating airport facilities or operations or taking other measures, except to the extent, if any, that such actions are validly required by government authority. LESSOR reserves these rights from the Premises an easement for flight of aircraft in or adjacent to the airspace above the Premises and for the existence and imposition over, on and upon said Premises of noise, light, vibrations, smoke, fumes, odors, air currents, electronic or other emissions, discomfort, inconvenience, interference with use and enjoyment, and any consequent reduction in market value which may occur directly or indirectly as a result of aviation, airport or airport-related operations at or otherwise associated with use of the Airport. LESSEE accepts the Premises subject to the risks and activities hereinabove described.

**Airport Hazards.** LESSEE by accepting this Agreement agrees for itself, its successors and assignees, that it will not make use of the leased Premises in any manner which might interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard. In the event this Agreement term is breached, LESSOR reserves the right to enter upon the Premises and cause the abatement of such interference at the expense of LESSEE without liability to LESSOR of any kind.

**Airport Rules and Regulations, Policies, and Standard Operating Procedures.** LESSOR will have the right to adopt, amend and enforce reasonable airport rules and regulations, policies and standard operating procedures with respect to use of and the conduct and operation of the Airport, its buildings and facilities or any improvements within the present or future boundaries of the Airport, which LESSEE agrees to observe and obey.

**Federal Aviation Administration Requirements.** LESSOR and LESSEE agree that the requirements of the Federal Aviation Administration (FAA) set out below are approved by both parties, and if applicable, LESSEE agrees to comply with all FAA requirements with respect to its operations, use of the Airport and this Agreement:

(a) The LESSEE, for itself and its representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained or otherwise operated on said property described in this Agreement for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the LESSEE shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted

Programs of the Department of Transportation, and as said Regulations may be amended.

(b) The LESSEE, for itself and its representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the LESSEE shall use the Premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

(c) The LESSEE assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. The LESSEE assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. The LESSEE assures that it will require that its covered suborganizations provide assurances to the LESSEE that they similarly will undertake affirmative action programs, and that they will require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

(d) It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308 of the Federal Aviation Act of 1958.

(e) LESSEE agrees to furnish service on a fair, equal and not unjustly discriminatory basis to all users thereof, and to charge fair, reasonable and not unjustly discriminatory prices for each unit or service; PROVIDED, that LESSEE may make reasonable and nondiscriminatory discounts, rebates or other similar types of price reductions to volume purchasers.

(f) LESSOR reserves the right (but shall not be obligated to LESSEE) to maintain and keep in repair the landing area of the airport and all publicly-owned facilities of the airport, together with the right to direct and control all activities of LESSEE in this regard.

(g) LESSOR reserves the right further to develop or improve the landing area and all publicly-owned air navigation facilities of the airport as it sees fit, regardless of the desires or views of LESSEE, and without interference or hindrance.

(h) LESSOR reserves the right to take any action it considers necessary to protect the aerial approaches of the airport against obstruction, together with the right to prevent LESSEE from erecting, or permitting to be erected, any building or other structure on the airport which, in the opinion of LESSOR, would limit the usefulness of the airport or constitute a hazard to aircraft.

(i) During time of war or national emergency LESSOR shall have the right to enter into

an agreement with the United States Government for military or naval use of part or all of the landing area, the publicly-owned air navigation facilities and/or other areas or facilities of the airport. If any such agreement is executed, the provisions of this instrument, insofar as they are inconsistent with the provisions of the agreement with the Government, shall be suspended.

(j) It is understood and agreed that the rights granted by this agreement will not be exercised in such a way as to interfere with or adversely affect the use, operation, maintenance or development of the airport.

(k) There is hereby reserved to LESSOR, its successors and assigns, for the use and benefit of the public, a free and unrestricted right of flight for the passage of aircraft in the air space above the surface of the Premises herein conveyed, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft now known or hereafter used for navigation of or flight in the air, using said airspace or landing at, taking off from or operating on or about the airport.

(l) This Agreement shall become subordinate to provisions of any existing or future agreement between the LESSOR and the United States of America or any agency thereof relative to the operation, development or maintenance of the airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport.

**Subordination to Agreements with the U.S. Government.** This Agreement is subject and subordinate to the provisions of any agreements heretofore or hereafter made between LESSOR and the United States Government relative to the operation or maintenance of Airport, the execution of which has been required as a condition precedent to the transfer of federal rights or property to LESSOR for Airport purposes, or the expenditure of federal funds for the improvement or development of Airport, including the expenditure of federal funds for the development of Airport in accordance with the provisions of the Federal Aviation Act of 1958, as it has been amended from time to time. LESSOR covenants that it has no existing agreements with the United States Government in conflict with the express provisions hereof.

**Non-Waiver of Rights.** No waiver or default by either party of any of the terms, warranties, covenants and conditions hereof to be performed, kept and observed by the other party shall be construed as, or shall operate as, a waiver of any subsequent default of any of the terms, warranties, covenants or conditions herein contained, to be performed, kept and observed by the other party.

**Notices.** Notices required herein may be given by registered, certified, or express mail, and shall be deemed served on the date such notice is deposited in the United States Mail, or by prepaid private courier in the continental United States. Either party shall have the right, by giving written notice to the other, to change the address at which its notices are to be received.

Until any such change is made, notices to LESSOR shall be delivered as follows:

Wichita Airport Authority  
Wichita Mid-Continent Airport  
2173 Air Cargo Road  
Wichita, Kansas 67209

Until any such change is made, notices to LESSEE shall be delivered as follows:

EagleMed LLC  
6601 Pueblo Road  
Wichita, Kansas 67209

**Captions.** The captions/headings of the Sections of this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope or intent of any provisions of this Agreement, and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

**Severability and Invalid Provisions.** In the event any term, covenant, condition or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of any such term, covenant, condition or provision shall in no way affect any other term, covenant, condition or provision herein contained; provided, however, that the invalidity of any such term, covenant, condition or provision does not materially prejudice either the LESSOR or the LESSEE in their respective rights and obligations contained in the valid terms, covenants, conditions or provisions in this agreement.

**Waiver of Claims.** LESSEE hereby waives any claim against LESSOR and its officers or employees for loss of anticipated profits, consequential or incidental damages, or claim for attorney fees caused by or resulting any suit or proceedings directly or indirectly attacking the validity of Agreement or any part thereof, or the manner in which it is executed or performed, or by any judgment or award in any legal proceeding declaring this Agreement null, void or voidable, or delaying the same of any part thereof, from being carried out. This waiver extends to all claims, whether the supporting legal theory lies in common law or has a statutory basis.

**Incorporation of Exhibits.** All exhibits referred to in this Agreement are intended to be and are hereby specifically made a part of this Agreement.

**Incorporation of Required Provisions.** The parties incorporate in this Agreement by this reference all provisions lawfully required to be contained herein by any governmental body or agency.



**Non-Liability of Agents and Employees.** No member, officer, agent or employee of either party to this Agreement shall be charged personally, or held contractually liable by or to the other party under the terms or provisions of this Agreement, or because of any breach thereof or because of its or their execution or attempted execution.

**Successors and Assigns Bound.** This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto where permitted by this Agreement.

**Time of Essence.** Time is of the essence in this Agreement.

**Relationship of the Parties.** It is understood LESSEE is not in any way or for any purpose a partner or joint venturer with or an agent of LESSOR. LESSEE shall act as an independent contractor in the performance of its duties pursuant to this Agreement.

**Interpretation.** LESSOR and LESSEE hereby agree that this Agreement shall not be construed or interpreted in favor of either party on the basis of preparation.

**Kansas Laws to Govern.** This Agreement and the terms and conditions herein contained shall at all times be governed, interpreted and construed under and in accordance with the laws of the State of Kansas, and venue for resolution of any issue pertaining to this Agreement shall be in Sedgwick County, Kansas.

## **42. THIRD PARTY RIGHTS**

It is agreed between the parties that it is not intended by any of the provisions of this Agreement to create for the public or any member thereof the status of a third-party beneficiary, or to authorize anyone not a party to this Agreement to maintain a suit for damages pursuant to the terms or provisions of this Agreement.

## **43. QUIET ENJOYMENT**

LESSOR agrees that, on payment of the rentals and fees and performance of the terms, covenants, conditions and agreements on the part of LESSEE to be performed in this Agreement, LESSEE will have the right to peaceably occupy and enjoy the Premises, subject however, to the GENERAL PROVISIONS contained in Section 41.

#### **44. HOLD OVER**

In the event LESSEE holds over the lease of the Premises, any rights granted after expiration of this Agreement without any written renewal of it shall not be deemed to operate as a renewal or extension of this Agreement, but shall only create a month-to-month arrangement, which may be terminated within thirty (30) days notice by LESSOR or LESSEE.

#### **45. SURRENDER OF POSSESSION AND RESTORATION**

LESSEE shall yield and deliver to LESSOR possession of the Premises at the expiration or termination of this Agreement in good condition in accordance with LESSEE's obligations in this Agreement, except for reasonable wear and tear, or fire or other casualty for which full insurance compensation has been paid as agreed. LESSEE shall, at its expense, deliver the Premises in good order and condition, including: (1) cleaning and hauling away all supplies and trash; (2) removing by legal means all materials and Substances classified as hazardous; (3) leaving in operating condition all bulbs and ballasts; (4) replacing all broken glass, (5) remove all computer network cable, and (6) return to LESSOR all keys to all doors and gates.

LESSEE, at LESSEE's expense, shall remove during the Term of the Agreement or at its expiration all non-attached equipment and personal property placed by LESSEE on or about the Premises herein leased, subject to LESSEE's repairing any damage thereto caused by such removal and subject to any valid lien which LESSOR may have on that property for unpaid rents, expenses or fees.

In the event LESSEE does not remove all of its equipment and personal property within thirty (30) calendar days after the termination of this Agreement, any remaining property shall be considered abandoned and LESSOR may dispose of said property without any further responsibility or liability to LESSEE. The net disposal costs of such property shall be the financial obligation of LESSEE.

#### **46. INTENTION OF PARTIES**

This Agreement is intended solely for the benefit of LESSOR and LESSEE and is not intended to benefit, either directly or indirectly, any third party or member(s) of the public at large. Any work done or inspection of the Premises performed by LESSOR is solely for the benefit of LESSOR and LESSEE.

Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint ventures, or any other

similar such relationship, between the parties hereto. Further, non-parties to this Agreement may not maintain a suit for personal injuries or property damage pursuant to the terms or provisions of the Agreement. The parties shall understand and agree that neither the method of payment, nor any other provision contained herein, nor any act(s) of the parties hereto creates a relationship other than the relationship of the LESSOR and the LESSEE.

#### **47. ENTIRE AGREEMENT**

The parties understand and agree that this instrument contains the entire Agreement between them. The parties hereto further understand and agree that the other party and its agents have made no representations or promises with respect to the Agreement or the making or entry into this Agreement, except as expressed in this Agreement, and that no claim or liability or cause for termination shall be asserted by either party against the other and such party shall not be liable by reason of, the making of any representations or promises not expressly stated in this Agreement, any other written or oral agreement with the other being expressly waived.

The individuals executing this Agreement personally warrant that they have full authority to execute this Agreement on behalf of the entity for which they are acting herein.

The parties hereto acknowledge that they have thoroughly read this Agreement, including any exhibits or attachments hereto, and have sought and received whatever competent advice and counsel deemed necessary for them to form a full and complete understanding of all rights and obligations herein.

#### **48. AMENDMENT**

This Agreement constitutes the entire Agreement between the parties for the lease of Premises set forth and identified under Section 1. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless the same is in writing, dated subsequent to the date hereof, and duly executed by the parties hereto.

#### **49. APPROVAL, CONSENT, DIRECTION OR DESIGNATION BY LESSOR**

Wherever under this Agreement, approvals, consents, directions, or designations are required or permitted, such approvals, consents, directions, or designations required or permitted under this Agreement shall be performed by the Director of Airports, or his/her authorized representative. Approvals, consents, directions, or designations made at any time by the Director of Airports, and from time to time, may be withdrawn or modified by notice from LESSOR to LESSEE.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

ATTEST:

THE WICHITA AIRPORT AUTHORITY  
WICHITA, KANSAS

By \_\_\_\_\_  
Karen Sublett, City Clerk

By \_\_\_\_\_  
Carl Brewer, President  
"LESSOR"

By \_\_\_\_\_  
Victor D. White, Director of Airports

ATTEST:

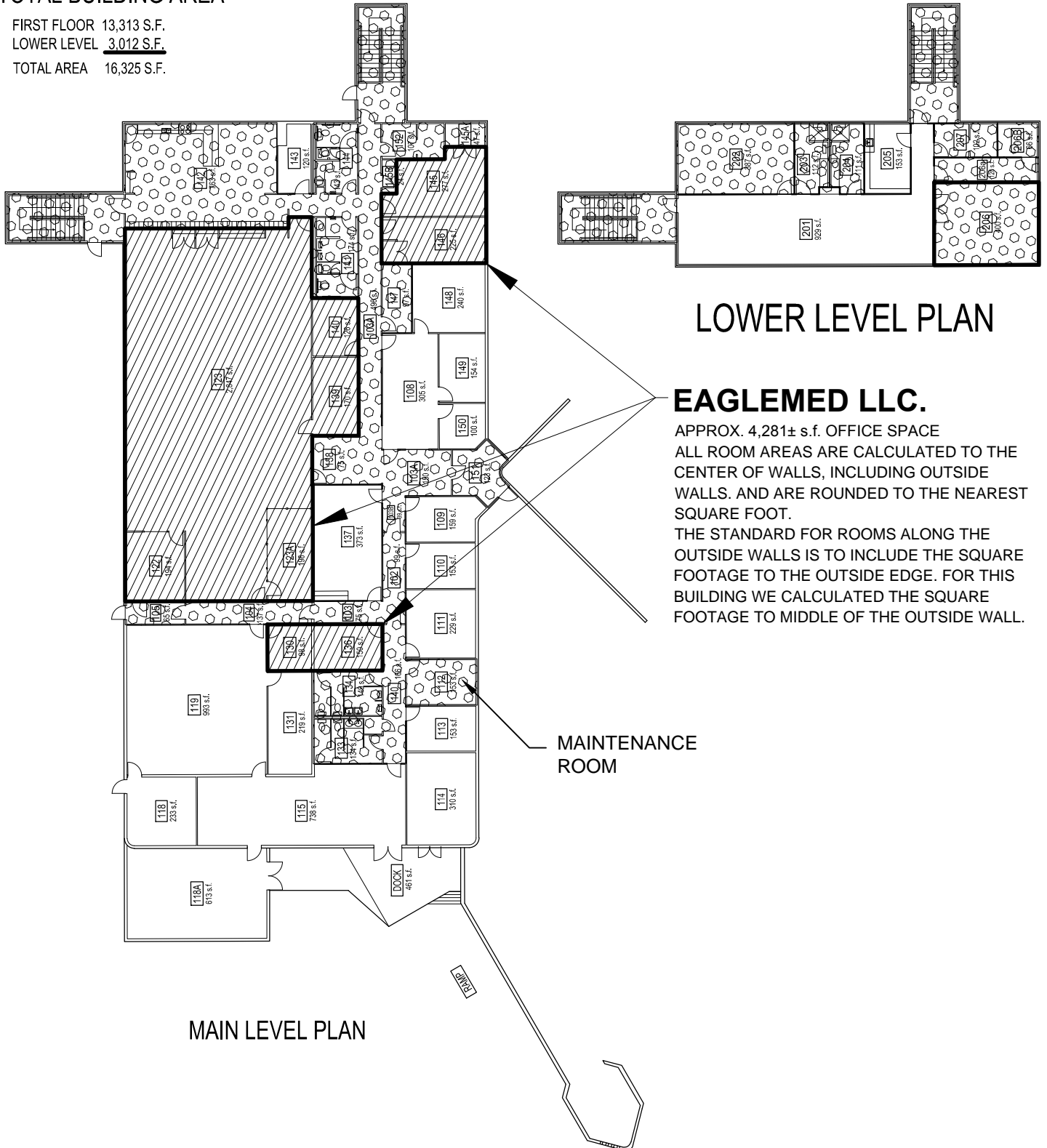
By \_\_\_\_\_

By \_\_\_\_\_  
Larry Bugg, President  
EAGLEMED, LLC  
"LESSEE"

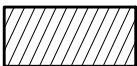
APPROVED AS TO FORM: \_\_\_\_\_ Date: \_\_\_\_\_  
Director of Law

## TOTAL BUILDING AREA

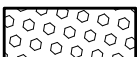
FIRST FLOOR 13,313 S.F.  
 LOWER LEVEL 3,012 S.F.  
 TOTAL AREA 16,325 S.F.



## LEGEND



**OFFICE AREA** = 4,281± sq.ft.



**COMMON AREA**

## DISCLAIMER:

THE INFORMATION ON THIS DRAWING IS THE BEST AVAILABLE AND CURRENT AS OF THE DRAWING DATE. CHANGES AND/OR CORRECTIONS MAY HAVE BEEN MADE AFTER THAT DATE.

## 1761 AIRPORT ROAD

## WICHITA MID-CONTINENT AIRPORT

THE WICHITA AIRPORT AUTHORITY  
 WICHITA, KANSAS

DATE	DR. BY	SCALE	SHEET
4/24/12	H.G.O.	1" = 30'	1 of 1